

**Calendar No. 710**

111TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
111-388

INTERNATIONAL FISHERIES STEWARDSHIP  
AND ENFORCEMENT ACT OF 2009

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 2870



DECEMBER 22, 2010.—Ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

99-010

WASHINGTON : 2010

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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### INTERNATIONAL FISHERIES STEWARDSHIP AND ENFORCEMENT ACT OF 2009

DECEMBER 22, 2010.—Ordered to be printed

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

### R E P O R T

[To accompany S. 2870]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2870) to establish uniform administrative and enforcement procedures and penalties for the enforcement of the High Seas Driftnet Fishing Moratorium Protection Act and similar statutes, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The purposes of S. 2870, the International Fisheries Stewardship and Enforcement Act of 2009, are to: strengthen and harmonize the enforcement provisions of U.S. statutes for implementing international fisheries agreements; authorize actions regarding foreign vessels engaged in illegal, unregulated, and unreported (IUU) fishing; authorize actions regarding the importation of IUU fish and fish product into the U.S.; create interagency programs for coordinating international fisheries enforcement and assistance to developing countries; make other technical and clarifying changes to international fisheries statutes; and authorize implementing legislation for the Antigua Convention.

#### BACKGROUND AND NEEDS

Many fish stocks around the world have become depleted in the last several decades as a result of fleet overcapacity, overfishing, and ineffective fisheries law enforcement regimes. Coastal nations

are responsible for managing the stocks that fall within their domestic waters, which extend up to 200 nautical miles from their coastline, also known as their Exclusive Economic Zone (EEZ). Unfortunately, many of these coastal nations do not manage for stock sustainability, enforce their regulations effectively, or coordinate management of shared stocks with other fishing nations.

The coordinated management of shared stocks among nations is accomplished by those nations participating in Regional Fisheries Management Organizations (RFMOs) or through international agreements created to guide and coordinate the fisheries management activities of multiple nations that target common stocks in specific regions. Each nation that chooses to participate in RFMOs or fisheries agreements retains its sovereignty, yet is expected to develop domestic fisheries laws and regulations consistent with each agreement. The U.S. follows this practice and seeks to implement legislation and regulations to meet the commitments under RFMOs and international fisheries agreements. Short of such an agreement or implementing legislation, U.S. fisheries managers seek discussions with foreign counterparts to address concerns on interjurisdictional stock management.

All U.S. international fishery enforcement activities are coordinated closely between the National Marine Fisheries Service (NMFS), the State Department, and the Coast Guard. The NMFS and the Coast Guard also provide input for the State Department's negotiations of fishery treaties and agreements, in addition to reviewing foreign fishing vessel permit applications. The NMFS and the Coast Guard jointly conduct fisheries enforcement patrols and investigations under a wide-ranging memorandum of understanding (MOU). Additionally, the NMFS and the Coast Guard cooperate closely with individual states and territories, and coordinate Magnuson-Stevens Fishery Conservation and Management Act (MSA, 10 U.S.C. 1801 et seq.) enforcement in and adjacent to state and territorial waters. Also, NMFS works closely with Customs and Border Protection to detect and intercept illegal fish and fish product from entering the U.S. Further, the Coast Guard conducts international enforcement operations in close coordination with the State Department, as required by Presidential Directive 27.

#### *Foreign Illegal, Unreported, and Unregulated (IUU) Fishing*

In general, the term "IUU fishing" describes a range of fishing activities including the failure to report or the misreporting of catches, fishing without the permission of a coastal country, and noncompliance with fishing gear and area rules. The extent to which IUU fishing occurs is not known precisely, but some have estimated that it accounts for as much as one quarter of the world's fish catch, and as such, represents one of the greatest challenges to sustainable global fishing management and conservation. The NMFS Office of Law Enforcement estimates that global IUU fishing is valued between \$10 billion and \$23 billion annually, and despite a lack of specific data, these harvests likely create significant ecological impacts.

Worldwide, the amount of IUU fishing appears to be increasing as IUU fishermen attempt to avoid stricter fishing rules created to address declining fish stocks. Preventing IUU fishing on the high

seas is difficult due to the vast areas of ocean to monitor, enforcement resource limitations, and a high volume of operating fishing vessels. Current international efforts to eliminate IUU fishing are mainly led through the United Nations' (UN) Food and Agriculture Organization (FAO), and are primarily focused on pressuring individual nations to better control and manage their fishing fleets. RFMOs strive to follow guidelines established by the UN to combat IUU fishing. For example, a number of RFMOs are currently developing requirements consistent with the recently concluded FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, which will help to prevent IUU fish from entering international markets.

#### *Unique IUU Challenges of Developing Countries*

In an effort to generate revenue, the governments of many coastal developing countries have negotiated agreements that allow developed countries, including Europe, China, and Russia, to harvest their fisheries resources. In some cases, officials from developing countries have oversold fishing rights, inflated potential catches, and allowed pirate vessels and locals free reign in breeding grounds. Fishing under these agreements can lead to overexploitation, as many of these coastal developing countries lack the capacity to conduct fish stock assessments, define sustainable harvest levels, and monitor and enforce regulations to guide fishing activity. This results in the rapid decline of local fish stocks, which removes the livelihood of local artisanal fishermen.

In an effort to combat IUU fishing, particularly along the coasts of developing countries, many marine policy experts call for ending the system of flags of convenience, improving port inspections, and reducing the fishing pressure caused by large fishing fleets from industrialized nations. However, these measures require resources, including funding, staff, technology, and expertise, that remain largely unavailable in many developing countries. Many foreign aid organizations, such as the World Bank, attempt to direct foreign financial and technical assistance to improve the sustainability of coastal nations' fisheries. The U.S. has initiated limited efforts to assist developing countries in targeting IUU fishing. The NMFS is engaged in activities to prevent, deter, and control bycatch and IUU actions in West Africa through observer training in Ghana and regional dialogues in Senegal. The National Oceanic and Atmospheric Administration (NOAA) has contacted the Coast Guard to examine the enforcement capabilities and the available governmental infrastructure and capacity of both Senegal and Gabon to promote fisheries conservation and management. In addition, NMFS has partnered with the U.S. Agency for International Development (USAID), the International Monitoring, Control and Surveillance Network, and other domestic and international partners to develop fisheries enforcement and management capacity building projects in Central America and in the Coral Triangle region.

#### *The Need for Legislation to Strengthen U.S. International Fisheries Enforcement*

The U.S. conducts international fisheries enforcement patrols and investigations through the NMFS Office of Law Enforcement (OLE) and the Coast Guard, with the State Department providing

diplomatic and legal support. These agencies enforce the provisions of statutes for implementing the terms of the international fisheries treaties and agreements to which the U.S. is a party. However, as each implementing statute was developed, they often took divergent approaches for establishing enforcement tools, setting fines and penalties, and otherwise carrying out enforcement patrols and investigations. As a result, U.S. international fisheries enforcement efforts are carried out under a patchwork of different standards and statutes. By harmonizing these standards and activities across statutes and with the MSA, U.S. fisheries enforcement officers and lawyers could streamline, clarify, and strengthen their overall approach for targeting foreign IUU fishing. Additionally, by increasing the fines and penalties, U.S. laws could have a more effective deterrent and make these penalties more than the cost of doing business. Additionally, the entry of IUU fish and fish product into the U.S. has a significant adverse effect on legally harvested seafood by providing an unfair market advantage to those trafficking in illegal products. While efforts are made to detect and prevent entry of IUU fish and fish product, significant enforcement tools are needed to effectively address the importation of IUU fish.

Internationally, the U.S. participated in an FAO organized effort to draft a legally-binding instrument on port state measures to prevent, deter, and eliminate IUU fishing. Ultimately, this agreement will deny port entry to IUU fishing vessels and other vessels that support IUU fishing. In the interim, there are certain steps that the U.S. can take to discourage IUU fishing. First, the U.S. can continue to make available the lists of IUU fishing vessels that are created and maintained by the RFMOs, allowing U.S. law enforcement officers, port authorities, and the commercial fishing industry to quickly and easily identify IUU fishing vessels. This information is useful for the commercial fishing industry given that there are significant risks and liabilities to engaging in business with those vessels. On January 11, 2010, NOAA published a proposed rule to deny port of entry to fishing vessels that have been listed as engaging in IUU fishing by RFMOs to which the U.S. is a Party. Second, upon completion of NOAA rulemaking procedures in 2010, the U.S. authority to deny port access to certain vessels engaged in high seas driftnet fishing will be expanded to vessels of nations certified to have engaged in IUU fishing as defined by the MSA. Lastly, the European Council adopted a regulation to prevent, deter, and eliminate IUU fishing. The regulation, which became effective on January 1, 2010, requires that all wild caught seafood and seafood products (with some exceptions) landed in, or exported to, the European Union are accompanied by a "catch certificate" attesting to the fact the fish was caught legally, i.e., is non-IUU. NMFS' Seafood Inspection Program is responsible for issuing and signing the catch certificate for U.S.-caught seafood.

Domestically, the U.S. can take steps to promote interagency cooperation and reduce the bureaucratic barriers that can limit the effectiveness of patrols, investigations, and any subsequent litigation. The NMFS Office of Law Enforcement and the Coast Guard undertake international fisheries enforcement activities to the extent that funding and other resources allow, and as such have had limited effectiveness in reducing IUU fishing and preventing all IUU fish product from entering the U.S. in FY2009, Congress pro-

vided \$1.1 million for targeting IUU fishing, and \$2.7 million in FY 2010. The FY 2011 budget request includes \$2.7 million for IUU enforcement activities. The U.S. could improve its law enforcement efforts by allowing agencies to share enforcement authorities, information, and intelligence (subject to appropriate protections), and other resources; enter into Memorandums of Understandings and other agreements with fisheries officers in states and other nations; and otherwise leverage intergovernmental tools and resources.

The U.S. can also build upon existing efforts to provide assistance and other support to developing countries struggling with fisheries management and IUU enforcement efforts. As noted above, the U.S. has provided minimal forms of support and assistance through the NMFS and the Coast Guard, but this topic has not been a significant part of the USAID or the Millennium Challenge Corporation, the two primary U.S. Federal programs for providing foreign assistance. By encouraging the development of programs aimed at international fisheries conservation and IUU fishing within the existing foreign assistance framework, in cooperation with experts in the NMFS and the Coast Guard, the U.S. can expand its reach and effectiveness in targeting this significant marine policy problem facing developing countries.

#### SUMMARY OF PROVISIONS

The International Fisheries Stewardship and Enforcement Act (IFSEA), S. 2870, would: (1) strengthen and harmonize the enforcement provisions of U.S. statutes for implementing international fisheries agreements; (2) authorize actions regarding foreign vessels engaged in IUU fishing; (3) create interagency programs for coordinating international fisheries enforcement and assistance to developing countries; (5) make other technical and clarifying changes to international fisheries statutes; and (6) authorize implementing legislation for the Antigua Convention.

Title I of IFSEA would strengthen the authority of NOAA and the Coast Guard to implement international fisheries laws, carry out investigations and enforcement activities, and establish new prohibited acts for interfering with investigations. The bill would conform the enforcement provisions of statutes for international fisheries agreements with the MSA, and increase civil and criminal penalties for violating international fisheries laws. Additionally, IFSEA would expand existing NOAA authorities to publicly maintain a list and take action against vessels engaged in IUU fishing. The bill would also amend the High Seas Driftnet Act to authorize the Secretary of the Treasury to deny port access to IUU fishing vessels from nations listed under the new national certification procedures that were authorized in section 403 of the Magnuson-Stevens Reauthorization Act.

Title II would create an International Fisheries Enforcement Program within NOAA and provide the agency with new authorities to increase interagency cooperation, share resources and information, and extend authorities to other law enforcement officers. It would also establish an International Cooperation and Assistance Program to provide assistance for international capacity building efforts; training for monitoring, enforcement, and conservation efforts; technical expertise, outreach, and education to combat IUU fishing and promote international marine conservation.

Title III would make technical and clarifying amendments to various statutes for implementing international fisheries agreements to improve and streamline program performance and rulemaking processes and facilitate information sharing. This includes technical corrections to clarify the status of the Commissioners appointed to the Western and Central Pacific Fisheries Management Commission and committee and advisory panel members appointed under the Pacific Whiting Act.

Title IV would authorize implementing legislation for the Convention for the Strengthening of the Inter-American Tropical Tuna Commission, also known as the Antigua Convention.

#### LEGISLATIVE HISTORY

Senator Inouye introduced the International Fisheries Stewardship and Enforcement Act of 2009 on December 10, 2009. Senators Snowe, Begich, Rockefeller, Kerry and Murkowski are cosponsors of the legislation. A similar version of this bill, S. 2907, was first introduced by Senator Inouye during the 110th Congress and reported favorably by the Committee. The Committee ordered the bill reported favorably. On March 24, 2010, the Committee met in open executive session and ordered S. 2870 reported without amendment.

#### ESTIMATED COSTS

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

APRIL 15, 2010.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2870, the International Fisheries Stewardship and Enforcement Act.

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

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

#### *S. 2870—International Fisheries Stewardship and Enforcement Act*

Summary: S. 2870 would establish uniform enforcement policies and procedures among federal statutes that govern the regulation of commercial fishing. The bill also would authorize funding for programs to improve the enforcement of laws related to international fisheries and coordinate enforcement actions among federal agencies. In addition, the bill would authorize the appropriation of funds to carry out several international fishing agreements. Finally, the bill would amend the Tuna Conventions Act of 1950 to implement the Antigua Convention, an international fishing agreement signed by the United States in 2003.

Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 2870 would cost \$533 million over the 2010–2015 period and \$22 million after 2015. Enacting this legislation could increase revenues (from civil and criminal penalties) and associated direct spending; therefore, pay-as-you-go procedures would apply. However, CBO estimates that the net effects would be negligible for each year.

S. 2870 contains an intergovernmental and private-sector mandate, as defined in the Unfunded Mandates Reform Act (UMRA), because it would require public and private entities, if subpoenaed, to provide testimony, documents, or other evidence to the Department of Commerce. CBO estimates that the cost to comply with the mandate would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$70 million and \$141 million in 2010, respectively, adjusted annually for inflation).

CBO has not reviewed title IV of the bill for intergovernmental or private-sector mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that title IV falls within that exclusion.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 2879 is shown in the following table. The costs of this legislation fall within budget function 300 (environment and natural resources).

	By fiscal year, in millions of dollars—						
	2010	2011	2012	2013	2014	2015	2010–2015
<b>Spending Under Current Law:</b>							
Budget Authority <sup>a</sup> .....	29	0	0	0	0	0	29
Estimated Outlays .....	19	6	3	1	0	0	29
<b>Proposed Changes:</b>							
<b>Title II—International Fisheries Enforcement Programs:</b>							
Authorization Level .....	35	35	35	35	35	35	210
Estimated Outlays .....	10	33	36	37	37	37	190
<b>Title III—Reauthorizations for International Fishing Agreements:</b>							
Estimated Authorization Level .....	66	93	93	93	0	0	345
Estimated Outlays .....	18	82	95	99	34	15	343
<b>Total Proposed Changes:</b>							
Estimated Authorization Level .....	101	128	128	128	35	35	555
Estimated Outlays .....	28	115	131	136	71	52	533
<b>Estimated Spending Under S. 2870:</b>							
Estimated Authorization Level .....	130	128	128	128	35	35	584
Estimated Outlays .....	47	121	134	137	71	52	562

<sup>a</sup>The National Oceanic and Atmospheric Administration (NOAA) has already received appropriations totaling \$29 million for 2010 to carry out certain activities authorized by the bill. The bill also would authorize the appropriation of \$1 million a year over the 2010–2013 period for the International Dolphin Conservation Program. NOAA has already received \$3 million (of the \$29 million shown in the table) to manage that program in 2010.

**Basis of estimate:** For this estimate, CBO assumes that the legislation will be enacted in calendar year 2010 and that the necessary amounts will be appropriated for each fiscal year, including supplemental appropriations for 2010. Estimated outlays are based on historical spending patterns for similar programs.

Title II would authorize the appropriation of \$30 million for each of fiscal years 2010 through 2015 for a new program to detect, investigate, and enforce laws against certain fishing activities. The new program would be administered by the National Oceanic and Atmospheric Administration (NOAA) and carried out with help

from other federal agencies, such as the U.S. Coast Guard and U.S. Customs and Border Protection. Title II also would authorize the appropriation of \$5 million annually over the same period for grants and other assistance to foreign governments to improve international enforcement of fisheries laws. Assuming appropriation of the authorized amounts, CBO estimates that implementing the new programs would cost \$190 million over the 2010–2015 period and \$20 million after 2015.

Title III would authorize the appropriation of \$91 million a year over the 2010–2013 period to carry out activities related to certain international fishing agreements and such sums as may be necessary to carry out similar activities under another international fishing agreement. Based on information from NOAA, CBO estimates that those activities would cost about \$2 million a year over the 2010–2013 period. NOAA has already received appropriations totaling \$29 million for 2010 to carry out activities related to those agreements. Assuming appropriation of the necessary amounts, CBO estimates that implementing title III would cost an additional \$343 million over the 2010–2015 period and \$2 million after 2015.

Title IV would amend the Tuna Conventions Act of 1950 to implement the Antigua Convention. Title IV would establish guidelines for the selection, composition, and duties of certain bodies that represent the United States on the Inter-American Tropical Tuna Commission. Because those bodies currently exist and members of those bodies are not compensated by the federal government, CBO estimates that implementing title IV would have no significant impact on the federal budget.

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 2870 could increase revenues (from civil and criminal penalties) and associated direct spending; therefore, pay-as-you-go procedures would apply. However, CBO estimates that any increase in revenues from penalties would be less than \$500,000 a year and would be offset by similar increases in direct spending from the Crime Victims Fund (for criminal penalties) or by NOAA (for civil penalties) as authorized by existing law. The net budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 2870, THE INTERNATIONAL FISHERIES STEWARDSHIP AND ENFORCEMENT ACT, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON MARCH 24, 2010

	By fiscal year, in millions of dollars—													
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2010–2015	2010–2020	
NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact ....	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Intergovernmental and private-sector impact: S. 2870 contains an intergovernmental and private-sector mandate as defined in UMRA because it would expand the authority of the Secretary of Commerce to issue subpoenas when investigating violations of certain fishing laws. Public and private entities, if subpoenaed, would be required to provide testimony, documents, or other evidence.

CBO expects that the Secretary would use that authority sparingly and that the costs to private and public entities to comply with such subpoenas would be small. Therefore, CBO estimates that the cost of the mandate would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$70 million and \$141 million in 2010, respectively, adjusted annually for inflation).

CBO has not reviewed title IV of the bill for intergovernmental or private-sector mandates. Section 4 of UMRA excludes from the application of that act any legislative provisions that are necessary for the ratification or implementation of international treaty obligations. CBO has determined that the provisions of title IV fall within that exclusion because they would implement the Antigua Convention.

Previous CBO estimate: On April 6, 2010, CBO transmitted a cost estimate for S. 2871, a bill to make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act, and for other purposes, as ordered reported by the Senate Committee on Commerce, Science, and Transportation on March 24, 2010. S. 2871 contains certain provisions that are similar to provisions in S. 2870. The CBO cost estimate for S. 2871 is the same as the cost estimate for similar provisions contained in S. 2870.

On July 22, 2009, CBO transmitted a cost estimate for H.R. 1080, the Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2009, as ordered reported by the House Committee on Natural Resources on June 10, 2009. Many provisions in H.R. 1080 are similar to provisions contained in S. 2870. CBO estimated that implementing H.R. 1080 would cost \$55 million over the 2010–2014 period. CBO expects that activities authorized under H.R. 1080 would be carried out under certain provisions of S. 2870; we estimate that the cost of carrying out those activities under S. 2870 would be similar over the 2010–2014 period.

Estimate prepared by: Federal costs: Jeff LaFave; Impact on state, local, and tribal governments: Ryan Miller; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

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

##### NUMBER OF PERSONS COVERED

S. 2870 would strengthen and harmonize the enforcement provisions of U.S. statutes for implementing international fisheries agreements, authorize actions regarding foreign vessels engaged in IUU fishing, authorize actions regarding the importation of IUU fish and fish product into the U.S., create interagency programs for coordinating international fisheries enforcement and assistance to developing countries, and make other technical and clarifying changes to international fisheries statutes. It would authorize the Secretary of Commerce (Secretary) to promulgate new regulations

to carry out its authorities to address new prohibited acts related to interfering with an international fisheries investigation, and therefore, would subject those individuals or businesses to new regulations.

#### ECONOMIC IMPACT

Title II of the reported bill would authorize \$30,000,000 for each of FYs 2010 through 2015 for the development and implementation of a new interagency International Fisheries Enforcement Program. It would also authorize \$5,000,000 for each of FYs 2010 through 2015 for the establishment of the International Cooperation and Assistance Program. Considering the potential cost savings and economic return on an effective international fisheries conservation program, the funding levels ultimately enacted are not expected to have an inflationary impact on the nation's economy.

#### PRIVACY

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

#### PAPERWORK

S. 2870 would not impose any new paperwork requirements on private citizens, businesses, or other entities that do not choose to participate in international fisheries activities; those who do participate in this industry may be subject to some changes in the paperwork requirements to meet emerging program needs.

#### CONGRESSIONALLY DIRECTED SPENDING

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

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short Title and Table of Contents.*

This section would designate the short title of this bill the "International Fisheries Stewardship and Enforcement Act." This section would also contain the Table of Contents.

#### TITLE I—ADMINISTRATION AND ENFORCEMENT OF CERTAIN FISHERY AND RELATED STATUTES

##### *Section 101. Authority of the Secretary to Enforce Statutes.*

Subsection (a) would direct the Secretary and the Secretary of the Department in which the Coast Guard is operating, currently the Department of Homeland Security, to enforce the statutes to which this section applies. The Secretary would be allowed, by agreement, to utilize the personnel, equipment, and facilities of any other Federal agency, including all elements of the Department of Defense to carry out this section. This section would apply to the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826d et seq.), title IV of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1411 et. seq.), the Dolphin Protection Consumer Information Act (16 U.S.C. 1385), the Tuna Conventions Act of

1950 (16 U.S.C. 951 et seq.), the North Pacific Anadromous Stocks Act of 1992 (16 U.S.C. 5001 et seq.), the South Pacific Tuna Act of 1988 (16 U.S.C. 973 et seq.), the Antarctic Marine Living Resources Convention Act of 1984 (16 U.S.C. 2431 et seq.), the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.), the Northwest Atlantic Fisheries Convention Act of 1995 (16 U.S.C. 5601 et seq.), the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 et seq.), the Northern Pacific Halibut Act of 1982 (16 U.S.C. 773 et seq.), and the Antigua Convention Implementing Act of 2008. In addition, this subsection could apply to any other Act of the same subject as designated by the Secretary after having given notice and an opportunity for a hearing.

Subsection (b) would direct the Secretary to prevent any person from violating any Act to which this section applies in the same way as though sections 307 through 311 of the MSA were incorporated into such Act. Any person, with a few exceptions, who violates any Act to which this section applies would be subject to the penalties, privileges, and immunities provided in sections 307 through 311 of the MSA.

Subsection (c) would provide that in the event of a conflict with a provision from the MSA, the provision of this subsection would apply. The amount of the civil penalty would not exceed \$250,000 per violation. Each day of a continuing violation would constitute a separate violation. The Attorney General, upon the request of the Secretary, would be allowed to take civil action in the appropriate district court of the United States to enforce this Act and any Act to which this section applies. Any person, other than a foreign government, who knowingly violates any provision of subsection (e) of this section, or any regulation conforming to this Act, would be guilty of a criminal offense and subject to penalties provided under section 309 of the MSA. Authorized officers enforcing the provisions of any Act to which this section applies would be authorized, with or without a warrant or other process, to search or inspect any facility used for the storage, processing, transport, or trade of fish or fish products; inspect any records pertaining to the storage, processing, transport, or trade of fish or fish products; detain, for 5 days, any shipment of fish or fish product within the jurisdiction of the United States; and make an arrest without a warrant. The Secretary could issue subpoenas for the production of relevant papers, photographs, records, books, and documents in any form including electronic, electrical, or magnetic.

Subsection (d) would give the district courts of the United States jurisdiction over any actions arising under this section. American Samoa would be included within the District of Hawaii. Any offenses not committed in any district would be subject to the venue provisions of section 3238 of title 18, United States Code.

Subsection (e) would create a list of unlawful activities and would direct the Secretary to enforce such regulations as may be necessary to carry out this section.

*Section 102. Conforming, Minor, and Technical Amendments.*

This section would provide for enforcement under section 101 of this Act, of the High Seas Driftnet Fishing Moratorium Protection Act, the Dolphin Protection Consumer Information Act, the Tuna

Conventions Act of 1950, the Northern Pacific Anadromous Stocks Act of 1992, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 et. seq.), the South Pacific Tuna Act of 1988, the Antarctic Marine Living Resources Convention Act of 1984, 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 Northern Pacific Halibut Act of 1982.

*Section 103. Illegal, Unreported, or Unregulated Fishing.*

This section would amend the High Seas Driftnet Fishing Moratorium Protection Act to include a list of vessels and vessel owners engaged in IUU fishing, to apply restrictions on port access to all U.S. ports, and to authorize authority for the Secretary of Treasury to take actions with respect to fishing vessels that receive a negative certification under section 609 or 910.

TITLE II—LAW ENFORCEMENT AND INTERNATIONAL OPERATIONS

*Section 201. International Fisheries Enforcement Program.*

Subsection (a) would direct the Secretary to establish an inter-agency International Fisheries Enforcement Program within the Office of Law Enforcement of NMFS, within 12 months of enactment. This program would detect and investigate IUU fishing activity and enforce the provisions of this Act. The program would have a representative from the Coast Guard, Customs and Border Protection, Food and Drug Administration, and any other agency deemed appropriate by the Secretary.

Subsection (b) would allow the Secretary to request from the heads of other departments and agencies providing program staff to participate in staffing the program by agreement, on a reimbursable basis or otherwise, to share personnel, services, equipment, and facilities with the program, and extend enforcement authorities to other agencies within the program for the purposes of this program. The Secretary and the department and agency heads providing staff for the program may develop interagency plans, budgets, and financing. Within 180 days after the establishment of the program, the Secretary shall develop a 5-year strategic plan, to be updated at least once every 5 years, for guiding interagency and intergovernmental international fisheries enforcement efforts. Additionally, the Secretary, in coordination with the heads of other departments and agencies providing staff for the program, may create and participate in task forces, committees, or other working groups, as well as enter into agreements with other Federal, state, or local governments, as well as with foreign governments, on a reimbursable basis or otherwise, for such purposes.

Subsection (c) would allow authorized officers to have the powers and authority provided in section 101 while enforcing the provisions of this Act.

Subsection (d) would direct the Secretary and the other program participants to share all applicable information, intelligence, and data related to IUU fishing. The Secretary, through the program, would coordinate the collection, storage, analysis, and dissemination of all applicable materials related to IUU fishing and would ensure the protection and confidentiality required by law for materials related to IUU fishing. The Secretary and the other program

participants would develop standardization for fisheries related data. Upon request of the Secretary, elements of the intelligence community would collect information related to IUU fishing outside the US about non-US citizens and share such information with the Secretary, through the program, for law enforcement purposes. In addition, this section would give the Secretary the authority to share fisheries related data with other Federal, state, and foreign governments, as well as international organizations, if such governments and organizations have policies and procedures to safeguard the information from unintended disclosure, and if the exchange of information is necessary to carry out the requirements of this section.

Subsection (e) would authorize \$30 million to the Secretary for each of FYs 2010 through 2015 to carry out the purposes of this section.

*Section 202. International Cooperation and Assistance Program.*

This section would direct the Secretary to establish an international cooperation and assistance program, including grants, to provide assistance for international capacity building efforts. In carrying out the program, the Secretary would provide funding and technical expertise to other nations to assist them in addressing IUU fishing, to reduce bycatch of living marine resources, and to improve marine resource conservation. Also, the Secretary would establish partnerships with other Federal agencies, conduct outreach and education efforts, and provide funding, technical expertise, and training to other nations to assist them in enhancing fisheries management and monitoring for sustainable fisheries. The Secretary would establish guidelines necessary to implement the program. In addition, this section would authorize \$5 million annually for each of FYs 2010 through 2015 for the Secretary to carry out the purposes of this section.

TITLE III—MISCELLANEOUS AMENDMENTS

*Section 301. Atlantic Tunas Convention Act of 1975.*

This section would repeal section 11 of the Atlantic Tunas Convention Act of 1975, which mandates an annual reporting requirement.

*Section 302. Data Sharing.*

This section would amend the High Seas Driftnet Fishing Moratorium Protection Act to include information sharing.

*Section 303. Permits Under the High Seas Fishing Compliance Act of 1995.*

This section would amend the High Seas Fishing Compliance Act of 1995 (16 U.S.C. 5501 et. seq.) to void a permit issued if either one or more permits required for a vessel to fish expire, are revoked, or suspended, or the vessel is no longer eligible for U.S. documentation.

*Section 304. Technical Corrections to the Western and Central Pacific Fisheries Convention Implementation Act.*

This section would make technical corrections to the Western and Central Pacific Fisheries Convention Implementation Act.

*Section 305. Pacific Whiting Act of 2006.*

This section would make technical corrections to section 605 of the Pacific Whiting Act of 2006 (16 U.S.C. 7004).

*Section 306. Committee on Scientific Cooperation For Pacific Salmon Agreement.*

This section would amend the Pacific Salmon Treaty Act to allow Members of the Committee on Scientific Cooperation who are not State or Federal employee to receive compensation when performing duties for the Commission.

*Section 307. Reauthorizations.*

This section would reauthorize the International Dolphin Conservation Program, the Pacific Salmon Treaty Act of 1985, and the South Pacific Tuna Act of 1988.

TITLE IV—IMPLEMENTATION OF THE ANTIGUA CONVENTION

*Section 401. Short Title.*

This section would allow this title to be cited as the ‘Antigua Convention Implementing Act of 2008’.

*Section 402. Amendment of the Tuna Conventions Act of 1950.*

This section would ensure that any reference in this title to an amendment or repeal, except as otherwise stated, would be to the Tuna Conventions Act of 1950.

*Section 403. Definitions.*

This section would define the following terms: “Antigua Convention,” “Convention,” “Import,” “Person,” “United States,” “U.S. Commissioners,” and “U.S. section.”

*Section 404. Commissioners; Number, Appointment, and Qualifications.*

This section would direct the President to appoint five U.S. Commissioners to represent the United States on the Commission. One Commissioner would be from the Department of Commerce, the Western Pacific Fishery Management Council, and the Pacific Fishery Management Council. Not more than two Commissioners would be appointed from states whose vessels do not maintain a substantial fishery in the area of the Convention. Alternate U.S. Commissioners could also be appointed in the case of a Commissioner’s absence.

*Section 405. General Advisory Committee and Scientific Advisory Subcommittee.*

This section would direct the Secretary, in consultation with the Secretary of State, to appoint a General Advisory Committee, consisting of no more than 25 individuals representing various groups, including nongovernmental conservation organizations. Members

would be appointed for 3-year terms and would be eligible for re-appointment. The Secretary and the Secretary of State would be directed to provide relevant information and administrative support to the Committee. This section would also direct the Secretary, in consultation with the Secretary of State, to appoint a Scientific Advisory Subcommittee consisting of 5 to 15 qualified scientists.

*Section 406. Rulemaking.*

This section would direct the Secretary of State to approve or disapprove bylaws and rules adopted by the Commission and submitted for approval of the U.S. government. Regulations and decisions by the Commission requiring the submission of boat operation records would be put into effect by the Secretary of Commerce and would apply to all vessels under U.S. jurisdiction. Regulations carrying out recommendations by the Commission would be exempt from notice and comment rulemaking procedures as well as requirements for environmental and economic analysis. The Secretary of Commerce would set the date such regulations go into effect. The Secretary of Commerce would suspend any rules under this section if foreign fishing operations constitute a threat to the achievement of the Commission's objectives.

*Section 407. Prohibited Acts.*

This section would make it unlawful for any person (1) to violate any provision of this chapter or any regulation or permit issued under the Tuna Conventions Act of 1950, as amended by the Antigua Convention Implementing Act of 2008; (2) to use any fishing vessel for fishing activities after an applicable permit has been revoked or suspended; (3) to refuse to permit any authorized officer to board a fishing vessel for purposes of enforcing the Tuna Conventions Act of 1950, as amended; (4) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an authorized officer enforcing the Tuna Conventions Act of 1950, as amended; (5) to resist a lawful arrest for any act prohibited by the Tuna Conventions Act of 1950, as amended; (6) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken in violation of the Tuna Conventions Act of 1950, as amended; (7) to interfere with, delay, or prevent the apprehension, or arrest of another person, knowing that such person has committed any act prohibited by this section; (8) to knowingly and willfully submit to the Secretary false information; (9) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any observer on a vessel; (10) to engage in fishing in violation of the Tuna Conventions Act of 1950, as amended; (11) to ship, transport, purchase, sell, offer for sale, import, export, or have in custody, possession, or control any fish taken in violation of applicable regulations; (12) to fail to make, keep, or furnish any catch returns, statistical records, or other reports as required by the Tuna Conventions Act of 1950, as amended; (13) to fail to stop a vessel upon being instructed to stop by an authorized official of the United States; or (14) to import, in violation of the Tuna Conventions Act of 1950, as amended, any fish in any form, including tuna not under regulation but under investigation by the Commission.

*Section 408. Enforcement.*

This section would enforce the Tuna Conventions Act of 1950, as amended, under section 101 of the International Fisheries Stewardship and Enforcement Act.

*Section 409. Reduction of Bycatch.*

This section would make minor technical corrections.

*Section 410. Repeal of Eastern Pacific Tuna Licensing Act of 1984*

This section would repeal the Eastern Pacific Tuna Licensing Act of 1984.

## CHANGES IN EXISTING LAW

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

## NORTHERN PACIFIC HALIBUT ACT OF 1982

## SEC. 7. PROHIBITED ACTS.

[16 U.S.C. 773e]

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 or inspection] *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 or inspection] *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

(G) *to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.*

[(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.

**[SEC. 3. CIVIL PENALTY; PROCEDURE.**

[16 U.S.C. 773f]

[(a)] **LIABILITY; CONTINUING VIOLATIONS; NOTICE; DETERMINATION OF AMOUNT.**—Any person who is found by the Secretary, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 7 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$200,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall taken into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require. In assessing such penalty, the Secretary may also consider any information provided by the violator relating to the ability of the violator to pay if the information is provided to the Secretary at least 30 days prior to an administrative hearing.

[(b)] **JUDICIAL REVIEW.**—Any person against whom a civil penalty is assessed under subsection (a) may obtain a review thereof in the appropriate 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 and the Attorney General. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, in accordance with rules prescribed pursuant to section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

[(c)] **RECOVERY OF ASSESSED PENALTIES BY ATTORNEY GENERAL.**—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

[(d)] **COMPROMISE, MODIFICATION, AND REMISSION OF PENALTIES.**—The Secretary 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.

[(e)] **REVOCATION OR SUSPENSION OF PERMIT.**—

[(1)] **IN GENERAL.**—The Secretary may take any action described in paragraph (2) in any case in which—

[(A)] a vessel has been used in the commission of any act prohibited under section 7;

[(B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under this Act has acted in violation of section 7; or

[(C) any amount in settlement of a civil forfeiture imposed on a vessel or other property, or any civil penalty or criminal fine imposed on a vessel or owner or operator of a vessel or any other person who has been issued or has applied for a permit under any marine resource law enforced by the Secretary has not been paid and is overdue.

[(2) PERMIT-RELATED ACTIONS.—Under the circumstances described in paragraph (1) the Secretary may—

[(A) revoke any permit issued with respect to such vessel or person, with or without prejudice to the issuance of subsequent permits;

[(B) suspend such permit for a period of time considered by the Secretary to be appropriate;

[(C) deny such permit; or

[(D) impose additional conditions and restrictions on any permit issued to or applied for by such vessel or person under this Act and, with respect to any foreign fishing vessel, on the approved application of the foreign nation involved and on any permit issued under that application.

[(3) FACTORS TO BE CONSIDERED.—In imposing a sanction under this subsection, the Secretary shall take into account—

[(A) the nature, circumstances, extent, and gravity of the prohibited acts for which the sanction is imposed; and

[(B) with respect to the violator, the degree of culpability, any history of prior offenses, and such other matters as justice may require.

[(4) TRANSFERS OF OWNERSHIP.—Transfer of ownership of a vessel, a permit, or any interest in a permit, by sale or otherwise, shall not extinguish any permit sanction that is in effect or is pending at the time of transfer of ownership. Before executing the transfer of ownership of a vessel, permit, or interest in a permit, by sale or otherwise, the owner shall disclose in writing to the prospective transferee the existence of any permit sanction that will be in effect or pending with respect to the vessel, permit, or interest at the time of the transfer.

[(5) REINSTATEMENT.—In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty, criminal fine, or any amount in settlement of a civil forfeiture, the Secretary shall reinstate the permit upon payment of the penalty, fine, or settlement amount and interest thereon at the prevailing rate.

[(6) HEARING.—No sanction shall be imposed under this subsection unless there has been prior opportunity for a hearing on the facts underlying the violation for which the sanction is imposed either in conjunction with a civil penalty proceeding under this section or otherwise.

[(7) PERMIT DEFINED.—In this subsection, the term “permit” means any license, certificate, approval, registration, charter, membership, exemption, or other form of permission issued by the Commission or the Secretary, and includes any quota share or other transferable quota issued by the Secretary.

**§ 9. CRIMES AND CRIMINAL PENALTIES.**

**[(a) OFFENSES.—**A person is guilty of any offense if he commits an act prohibited by section 7(a)(2), (3), (4), or (6); or section 7(b).

**[(b) FINES; IMPRISONMENT.—**Any offense described in subsection (a) is punishable by a fine of not more than \$200,000 or imprisonment for not more than 6 months or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act, or places any such officer in fear of imminent bodily injury the offense is punishable by a fine of not more than \$400,000, or imprisonment for not more than 10 years or both.

**[(c) FEDERAL JURISDICTION.—**There is Federal jurisdiction over any offense described in this section.

**§ 10. FORFEITURES.**

**[(a) CIVIL FORFEITURE PROCEEDING.—**Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 7 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

**[(b) UNITED STATES DISTRICT COURT JURISDICTION.—**Any district court of the United States shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

**[(c) SEIZURE OF FORFEITED PROPERTY.—**If a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

- [(1) the disposition of forfeited property;**
- [(2) the proceeds from the sale of forfeited property;**
- [(3) the remission or mitigation of forfeitures; and**
- [(4) the compromise of claims;**

shall apply to any forfeiture ordered, and to any case in which forfeiture is alleged to be authorized, under this section, unless such provisions are inconsistent with the purposes, policy, and provisions of this Act. The duties and powers imposed upon the Commissioner of Customs or other persons under such provisions shall, with respect to this Act, be performed by officers or other persons designated for such purpose by the Secretary.

**[(d) BOND OR OTHER SECURITY; DISPOSAL OF SEIZED FISH.—**

**[(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 11(d) shall—**

- [(A) stay the execution of such process; or**
- [(B) discharge any fish seized pursuant to such process; upon the receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security**

shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

[(2) Any fish seized pursuant to this Act may be disposed of pursuant to the order of a court of competent jurisdiction or, if perishable, in a manner prescribed by regulations of the Secretary or the Secretary of the department in which the Coast Guard is operating.

[(e) PRESUMPTION OF VIOLATION.—For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 7 were taken or retained in violation of the Convention and this Act.]

#### SEC. 11. ADMINISTRATION AND ENFORCEMENT.

[16 U.S.C. 773i]

(a) SECRETARY OF COMMERCE AND SECRETARY OF DEPARTMENT IN WHICH COAST GUARD IS OPERATING.—The Convention, this Act, and any regulation adopted under this Act, shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries 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) ARREST, SEARCH AND INSPECTION, SEIZURE; EXECUTION OF WARRANTS AND OTHER PROCESS.—Any officer who is authorized by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a) to enforce the Convention, this Act or any regulation adopted under this Act may—

[(1) with or without a warrant or other process—

[(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 7;

[(B) board, and search or inspect, any fishing vessel which is subject to this Act;

[(C) at reasonable times enter, search or inspect, shore-side facilities in which fish taken subject to this Act are processed, packed or held;

[(D) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, an act prohibited by section 7;

[(E) seize any fish (wherever found) taken or retained in the course of an act prohibited by section 7, or the proceeds of the sale of such fish; and

[(F) seize any other evidence related to an act prohibited by section 7;

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

[(3) exercise any other lawful authority.

[(c) CITATION OF OWNER OR OPERATOR OF OFFENDING VESSEL.—If any officer authorized to enforce this Act (as provided for in this section) finds that a fishing vessel is operating or has been operated in the commission of an act prohibited by section 7, such officer may, in accordance with regulations issued jointly by the Secretary and the Secretary of the department in which the Coast Guard is operating, issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (b). If a permit has been issued pursuant to this Act for such vessel, such officer shall note the issuance of any citation under this subsection, including the date thereof and the reason therefor, on the permit. The Secretary shall maintain a record of all citations issued pursuant to this subsection.

[(d) UNITED STATES DISTRICT COURT JURISDICTION.—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under this Act. Any such court 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.

[(e) WITNESSES; RECORDS AND FILES.—When requested by the appropriate authorities of Canada, officers or employees of the Coast Guard, the National Oceanic and Atmospheric Administration or any other agency of the United States may be directed to attend as a witness, and to produce such available records and files or duly certified copies thereof as may be necessary for the prosecution in Canada of any violation of the Convention or any Canadian law relating to the enforcement thereof.

[(f) INVESTIGATIONS BY SECRETARY OF COMMERCE; POWERS; PROCESS.—

[(1) In cooperation with such other agencies as may be appropriate, the Secretary may conduct or cause to be conducted such law enforcement investigations as are deemed necessary to carry out the purposes of this Act.

[(2) For the purpose of all investigations which, in the opinion of the Secretary, are necessary and proper for the enforcement of this Act, the Secretary or any officer designated by him is empowered to administer oaths and affirmations, subpoena witnesses, take evidence, and require the production of any books, papers, or other documents which the Secretary deems relevant or material to the inquiry. Such attendance of witnesses and the production of such documentary evidence may be required from any place in the United States at any designated place or hearing.

[(3) Process of the Secretary may be served by anyone duly authorized by him either—

[(A) by delivering a copy thereof to the individual to be served, or to a member of the partnership to be served, or the president, secretary, or other executive officer or a di-

rector of the corporation to be served; or the agent designated for service of process;

【(B) by leaving a copy thereof at the residence or the principal office or place of business of such individual, partnership, or corporation; or

【(C) by mailing a copy thereof by registered or certified mail addressed to such individual, partnership, or corporation at his or its residence or principal office or place of business. The verified return by the individual so serving such complaint, order, or other process setting forth the manner of service shall be proof of same, and the returned post office receipt for such complaint, order, or other process mailed by registered or certified mail shall be proof of the service of the same.】

(b) *ADMINISTRATION AND ENFORCEMENT.*—*This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

## TUNA CONVENTIONS ACT OF 1950

### 【SEC. 2. DEFINITIONS.

[16 U.S.C. 951]

【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;

【(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. 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) *IMPORT.*—The term “import” means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States.

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

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

(7) *U.S. COMMISSIONERS.*—The term “U.S. commissioners” means the members of the commission.

(8) *U.S. SECTION.*—The term “U.S. section” means the U.S. Commissioners to the Commission and a designee of the Secretary of State.

**SEC. 3. COMMISSIONERS; NUMBER, APPOINTMENT, AND QUALIFICATION.**

[ 16 U.S.C. 952]

【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. 3. COMMISSIONERS.**

(a) *COMMISSIONERS.*—The United States shall be represented on the Commission by 5 United States Commissioners. The President

shall appoint individuals to serve on the Commission at the pleasure of the President. In making the appointments, the President shall select Commissioners from among individuals who are knowledgeable or experienced concerning highly migratory fish stocks in the eastern tropical Pacific Ocean, one of whom shall be an officer or employee of the Department of Commerce, one of whom shall be the chairman or a member of the Western Pacific Fishery Management Council, and one of whom shall be the chairman or a member of the Pacific Fishery Management Council. Not more than 2 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 Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be designated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) *ADMINISTRATIVE MATTERS.*—

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

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

(3) *TRAVEL EXPENSES.*—

(A) The Secretary of State shall pay the necessary travel expenses of United States Commissioners and Alternate United States Commissioners to meetings of the IATTC and other meetings the Secretary 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.**

[16 U.S.C. 953]

[(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.】

(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 U.S. 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 General Committee shall be 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 Section 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 chapter, 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) *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.】*

(b) *SCIENTIFIC ADVISORY COMMITTEE.—(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 non-executive meetings of the United States sections and the General Advisory Subcommittee 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. SECRETARY OF STATE TO ACT FOR UNITED STATES.]**

[16 U.S.C. 955]

**[(a) APPROVAL OF COMMISSION BYLAWS AND RULES; ACTION ON REPORTS, REQUESTS, AND RECOMMENDATIONS.—**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.—**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.]

**SEC. 6. RULEMAKING.**

(a) REGULATIONS.—*The Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the Sec-*

*retary 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 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 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.*

(c) *RULEMAKING PROCEDURES; PROHIBITIONS.*—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 recommendation 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 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 [16 USC § 951 et seq.]; 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 commission. 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. 8. VIOLATIONS; FINES AND FORFEITURES; APPLICATION OF RELATED LAWS.**

[16 U.S.C. 957]

[(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, 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.] *regulation or for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including the false identification of species, harvesting vessel or nation or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.*

[(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, 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. 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.]

[(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.]

**SEC. 8. PROHIBITED ACTS.**

*It is unlawful for any person—*

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

*(2) 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;*

*(3) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 10) 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 Act or any regulation, permit, or the Convention;*

*(4) to forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with any such authorized officer in the conduct of any search, investigations or inspection in con-*

*nection with the enforcement of this Act or any regulation, permit, or the Convention;*

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

*(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 Act 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 act prohibited by this section;*

*(8) to knowingly and willfully submit to the Secretary false information regarding any matter that the Secretary is considering in the course of carrying out this Act;*

*(9) 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;*

*(10) to engage in fishing in violation of any regulation adopted pursuant to section 6(c) of this Act;*

*(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 Act 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; and*

*(14) to import, in violation of any regulation adopted pursuant to section 6(c) of this Act, 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 6(c) of this Act, unless such person provides such proof as the Secretary of Commerce may require that a fish described in this paragraph offered for entry into the United States is not ineligible for such entry under the terms of section 6(c) of this Act.*

#### **[SEC. 10. ENFORCEMENT.]**

[16 U.S.C. 959]

**[(a) ISSUANCE OF PROCESS.]**—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) FEDERAL LAW ENFORCEMENT AGENTS.]**—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) EXECUTION OF PROCESS.—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) ARRESTS.—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) SEIZURES AND DISPOSITION OF FISH.—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) SECURITY.—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.**

*This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

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

[16 U.S.C. 962]

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.

#### ATLANTIC TUNAS CONVENTION ACT OF 1995

##### SEC. 6. ADMINISTRATION.

[16 U.S.C. 971d]

(a) REGULATIONS; COOPERATION WITH OTHER PARTIES TO CONVENTION; UTILIZATION OF PERSONNEL, SERVICES, AND FACILITIES FOR ENFORCEMENT.—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 exclusive economic 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) PRIMARY ENFORCEMENT RESPONSIBILITY.—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) REGULATIONS AND OTHER MEASURES TO CARRY OUT COMMISSION RECOMMENDATIONS.—

(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) submission] *the presentation* of written data, views, or [arguments, and (B) oral presentation at a public hearing. Such] *written or oral statements at a public hearing. After consideration of such presentations, the* 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) *The Secretary may issue final regulations to implement Commission recommendations referred to in paragraph (1) of this subsection concerning trade restrictive measures against nations or fishing entities without regard to the requirements of subparagraph (A) of this paragraph and subsections (b) and (c) of section 553 of title 5, United States Code.*

(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 effectiveness of the conservation recommendations of the Commission, of fish in any form of those spe-

cies 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) COMMISSION RECOMMENDATIONS CONCERNING LARGE-SCALE DRIFTNET FISHING AND CONSERVATION OF ATLANTIC SWORDFISH.—

(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.

**SEC. 7. VIOLATIONS; FINES AND FORFEITURES; RELATED LAWS.**

[16 U.S.C. 971e]

(a) IN GENERAL.—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) FAILURE TO FURNISH RETURNS, RECORDS, OR REPORTS.—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) REFUSAL OF REQUEST TO BOARD AND INSPECT VESSEL.—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 accordance 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) IMPORTATION OF INELIGIBLE SPECIES OR SPECIES UNDER INVESTIGATION.—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) SANCTIONS.—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) FORFEITURE.—All fish taken or retained in violation of subsection (a) of this section, or the monetary value thereof, may be forfeited.]

(e) MISLABELING.—*It shall be unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including the false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be, imported, exported, transported, sold, offered for sale, purchased or received in interstate or foreign commerce.*

[(g)] (f) APPLICABILITY OF OTHER LAWS.—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.

#### SEC. 8. ENFORCEMENT.

[16 U.S.C. 971f]

[(a) PARTICULAR POWERS.—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 juris-

diction, or, if perishable, in a manner prescribed by regulation of the Secretary.]

[(b) INTERNATIONAL ENFORCEMENT.—] *This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.* 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] *shall enforce this Act* 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] *shall enforce this Act* 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) BONDS OR STIPULATIONS.—] 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.]

#### [SEC. 11. ANNUAL REPORT.

[16 U.S.C. 971j]

[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.]

**[EASTERN PACIFIC TUNA LICENSING ACT OF 1984**

[This Act may be cited as the “Eastern Pacific Tuna Licensing Act of 1984”.

**[SEC. 2. DEFINITIONS.**

[16 U.S.C. 972]

[As used in this Act—

[(1) The term “Agreement” means the Eastern Pacific Ocean Tuna Fishing Agreement, signed in San Jose, Coast 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 maccoyil* (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*

chiliensis (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.**

[16 U.S.C 972a]

[(a) APPOINTMENT BY SECRETARY OF STATE.—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) QUALIFICATION.—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) COMPENSATION.—An individual is not entitled to compensation for serving as the United States representative or an alternate United States representative.

[(d) TRAVEL EXPENSES.—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.**

[16 U.S.C 972b]

[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.**

[16 U.S.C. 972c]

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

[16 U.S.C. 972d]

【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.**

[16 U.S.C. 972e]

【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.**

[16 U.S.C. 972f]

【(a) UNLAWFUL ACTS.—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) PENALTIES.—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) FORFEITURE.—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) APPLICATION OF LAWS RELATING TO SEIZURES AND FORFEITURES.—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 provision of this Act.

**[SEC. 9. ENFORCEMENT.**

[16 U.S.C. 972g]

[(a) WARRANTS.—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) JOINT RESPONSIBILITY FOR ENFORCEMENT.—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) EXECUTION OF WARRANTS AND PROCESS.—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) ARREST; SEARCH.—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) SEIZURE.—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) BOND OR STIPULATION FOR VALUE OF THE PROPERTY.—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 accused, 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.

**ISEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

[16 U.S.C. 972h]

【There are authorized to be appropriated for fiscal years after fiscal year 1984 such sums as may be necessary to carry out this Act.】

**SOUTH PACIFIC TUNA ACT OF 1988**

**SEC. 2. DEFINITIONS.**

[16 U.S.C. 973]

As used in this Act—

(1) The term “Administrator” means the individual or organization designated by the Pacific Island Parties to act on their behalf under the Treaty and notified to the United States Government.

(2) The term “Authorized Officer” means any officer who is authorized by the Secretary, or the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an enforcement agreement with the Secretary under section 10(a) of this Act.

(3) The term “Authorized Party Officer” means any officer authorized by a Pacific Island Party to enforce the provisions of the Treaty.

(4) The term “applicable national law” means any provision of law of a Pacific Island Party which is described in paragraph 1(a) of Annex I of the Treaty.

(5) The term “Closed Area” means any of the closed areas identified in Schedule 2 of Annex I of the Treaty.

(6) The term “fishing” means—

(A) searching for, catching, taking, or harvesting fish;

(B) attempting to search for, catch, take, or harvest fish;

(C) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish;

(D) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

- (E) any operations at sea directly in support of, or in preparation for, any activity described in this paragraph; or
- (F) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel.
- (7) The term “fishing vessel” or “vessel” means any boat, ship, or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, and which is documented under the laws of the United States.
- (8) The term “Licensing Area” means all waters in the Treaty Area except for—
- (A) those waters subject to the jurisdiction of the United States in accordance with international law;
- (B) those waters within Closed Areas; and
- (C) those waters within Limited Areas closed to fishing.
- (9) The term “licensing period” means the period of validity of licenses issued in accordance with the Treaty.
- (10) The term “Limited Area” means any area so identified in Schedule 3 of Annex I of the Treaty.
- (11) The term “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer, and master.
- (12) The term “Pacific Island Party” means a Pacific Island nation which is a party to the Treaty.
- (13) The term “Party” means a nation which is a party to the Treaty.
- (14) The term “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.
- (15) The term “SEC.etary” means the Secretary of Commerce, or the designee of the Secretary of Commerce.
- (16) The term “State” means each of the several States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.
- (17) The term “Treaty” means the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed in Port Moresby, Papua New Guinea, April 2, 1987, and its Annexes, Schedules, and implementing agreements.
- (18) The term “Treaty Area” means the area so described in paragraph 1(k) of Article 1 of the Treaty.

**SEC. 5. PROHIBITED ACTS.**

[16 U.S.C. 973c]

- (a) Except as provided in section 6 of this Act, it is unlawful for any person subject to the jurisdiction of the United States—
- (1) to violate any provision of this Act or any regulation or order issued pursuant to this Act;

(2) to use a vessel for fishing in violation of an applicable national law;

(3) who has entered into a fishing arrangement under paragraph 3 of Article 3 of the Treaty, to violate the terms and conditions of such fishing arrangement if the Secretary of State has decided under section 18 of this Act that Article 4 and paragraph 6 of Article 5 of the Treaty shall apply to the arrangement;

(4) to use a vessel for fishing in any Limited Area in violation of any requirement in Schedule 3 of Annex I of the Treaty;

(5) to use a vessel for fishing in any Closed Area;

(6) to falsify any information required to be reported, notified, communicated, or recorded pursuant to a requirement of this Act, or to fail to submit any required information, or to fail to report to the Secretary immediately any change in circumstances which has the effect of rendering any such information false, incomplete, or misleading;

(7) to intentionally destroy evidence which could be used to determine if a violation of this Act or the Treaty has occurred;

(8) to refuse to permit any Authorized Officer or Authorized Party Officer to board a fishing vessel for purposes of conducting a **【search or inspection】** *search, investigation, or inspection* in connection with the enforcement of this Act or the Treaty;

(9) to refuse to comply with the instructions of an Authorized Officer or Authorized Party Officer relating to fishing activities under the Treaty;

(10) to forcibly assault, resist, oppose, impede, intimidate, or interfere with—

(A) any Authorized Officer or Authorized Party Officer in the conduct of a **【search or inspection】** *search, investigation, or inspection* in connection with the enforcement of this Act or the Treaty; or

(B) an observer in the conduct of observer duties under the Treaty;

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

(12) 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; **【or】**

(13) 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 the Treaty, with the knowledge that the fish were so taken or **【retained.】** *retained*; or

(14) *for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.*

(b) Except as provided in section 6 of this Act, it is unlawful for any person subject to the jurisdiction of the United States when in the Licensing Area—

(1) to use a vessel to fish unless validly licensed as required by the Administrator;

(2) to use a vessel for directed fishing for southern bluefin tuna or for fishing for any kinds of fish other than tunas, except that fish may be caught as an incidental by-catch;

(3) to use a vessel for fishing by any method other than the purse-seine method;

(4) to use any vessel to engage in fishing after the revocation of its license, or during the period of suspension of an applicable license;

(5) to operate a vessel in such a way as to disrupt or in any other way adversely affect the activities of traditional and locally based fishermen and fishing vessels;

(6) to use a vessel to fish in a manner inconsistent with an order issued by the Secretary under section 11 of this Act; or

(7) except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, to use an aircraft in association with the fishing activities of a vessel unless it is identified in the license application for the vessel, or any amendment thereto.

#### **[SEC. 7. CRIMINAL OFFENSES.**

[16 U.S.C. 973e]

[(a) PROHIBITED ACTS.—A person is guilty of a criminal offense if he or she commits any act prohibited by section 5(a)(8), (10), (11), or (12) of this Act.

[(b) SENTENCE AND FINE.—Any offense described in subsection (a) of this section is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any Authorized Officer, Authorized Party Officer, or observer under the Treaty in the conduct of their duties, or places any such Authorized Officer, Authorized Party Officer, or observer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000 or imprisonment for not more than 10 years, or both.

[(c) JURISDICTION.—The district courts of the United States shall have jurisdiction over any offense described in this section.

#### **[SEC. 8. CIVIL PENALTIES.**

[16 U.S.C. 973f]

[(a) DETERMINATION OF LIABILITY; AMOUNT; PARTICIPATION BY SECRETARY OF STATE IN ASSESSMENT PROCEEDING.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 5 of this Act, shall be liable to the United States Code for a civil penalty. Before issuing a notice of violation, the Secretary shall consult with the Secretary of State. The amount of the civil penalty shall be determined in accordance with considerations set forth in the Treaty and shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed, and with respect to the

violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require. Except for those acts prohibited by section 5(a) (4), (5), (7), (8), (10), (11), and (12), and section 5(b)(1), (2), (3), and (7) of this Act [16 USCS § 973c(a)(4), (5), (7), (8), (10)-(12), (b)(1)-(3), (7)], the amount of the civil penalty shall not exceed \$250,000 for each violation. Upon written notice, the Secretary of State shall have the right to participate in any proceeding initiated to assess a civil penalty for violation of this Act.

[(b) JUDICIAL REVIEW OF ASSESSMENT; PROCEDURES APPLICABLE.—Any person against whom a civil penalty is assessed under subsection (a) of this section may obtain review thereof in the United States district court for the appropriate district by filing a complaint in such court within 30 days from the date of the order and by simultaneously serving a copy of the complaint by certified mail on the Secretary, the Attorney General of the United States, and the appropriate United States Attorney. The Secretary shall promptly file in the court a certified copy of the record upon which the violation was found or the penalty imposed. The findings and order of the Secretary shall be set aside or modified by the court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

[(c) FAILURE TO PAY ASSESSMENT OF CIVIL PENALTY; RECOVERY BY ATTORNEY GENERAL.—Except as provided in subsection (g) of this section, if any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States.

[(d) IN REM LIABILITY FOR CIVIL PENALTY; JURISDICTION; MARITIME LIEN ON VESSEL.—Except as provided in subsection (g) of this section, a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 5 of this Act shall be liable in rem for any civil penalty assessed for the violation under section 8 of this Act [this section] and may be proceeded against in any district court of the United States having jurisdiction thereof. The penalty shall constitute a maritime lien on the vessel which may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

[(e) COMPROMISE, ETC., OF CIVIL PENALTY.—The Secretary, after consultation with the Secretary of State, 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.

[(f) CONDUCT OF HEARINGS.—For the purposes of conducting any hearing under this section, the Secretary 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 contempt or refusal to obey a subpoena served upon a person pursuant to this subsection, the district court of the United States for any district in which the person is found, resides, or transacts business, upon application by the United States and after notice to

the person, shall have jurisdiction to issue an order requiring the person to appear and give testimony before the Secretary or to appear and produce documents before the Secretary, or both, and any failure to obey the order of the court may be punished by the court as a contempt thereof.

[(g) WAIVER OF REFERRAL TO ATTORNEY GENERAL.—If a vessel used in a violation of section 5(a)(1), (2), (3), (4), (5), (6), (7), (8), (9), or (13) or section 5(b) of this Act for which a civil penalty has been assessed—

(1) had a valid license under the Treaty at the time of the violation, and

(2) within 60 days after the penalty assessment has become final, leaves and remains outside of the Licensing Area, all Limited Areas closed to fishing, and all Closed Areas until the final penalty has been paid,

there shall be no referral to the Attorney General under subsection (c) of this section or in rem action under subsection (d) of this section in connection with such civil penalty.]

**SEC. 7. ADMINISTRATION AND ENFORCEMENT.**

*This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

**SEC. 20. AUTHORIZATION OF APPROPRIATIONS.**

[16 U.S.C.973r]

(a) There are authorized to be appropriated for fiscal years [1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002,] 2009 through 2013 such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this Act including—

(1) for fiscal years [1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002,] 2009 through 2013 an amount not to exceed \$350,000 annually to the Department of Commerce for administrative expenses; and

(2) for fiscal years [1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, and 2002,] 2009 through 2013 an amount not to exceed \$50,000 annually to the Department of State for administrative expenses.

(b) Funds appropriated for the purposes of the Treaty may be used notwithstanding any of the provisions of the Foreign Assistance Act of 1961 (22 U.S.C. 2151 et seq.) or of any appropriations Act that imposes restrictions on the maintenance or use of cash transfer assistance, which are inconsistent with the provisions of the Treaty.

**FISHERY CONSERVATION AMENDMENTS OF 1990**

**SEC. 901. DOLPHIN PROTECTION.**

[16 U.S.C. 1385]

(a) SHORT TITLE.—This section may be cited as the “Dolphin Protection Consumer Information Act”.

(b) FINDINGS.—The Congress finds that—

(1) dolphins and other marine mammals are frequently killed in the course of tuna fishing operations in the eastern tropical Pacific Ocean and high seas driftnet fishing in other parts of the world;

(2) it is the policy of the United States to support a world-wide ban on high seas driftnet fishing, in part because of the harmful effects that such driftnets have on marine mammals, including dolphins; and

(3) consumers would like to know if the tuna they purchase is falsely labeled as to the effect of the harvesting of the tuna on dolphins.

(c) DEFINITIONS.—For purposes of this section—

(1) the terms “driftnet” and “driftnet fishing” have the meanings given those terms in section 4003 of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (16 U.S.C. 1822 note);

(2) the term “eastern tropical Pacific Ocean” means the area of the Pacific Ocean bounded by 40 degrees north latitude, 40 degrees south latitude, 160 degrees west longitude, and the western coastlines of North, Central, and South America;

(3) the term “label” means a display of written, printed, or graphic matter on or affixed to the immediate container of any article;

(4) the term “Secretary” means the Secretary of Commerce; and

(5) the term “tuna product” means a food item which contains tuna and which has been processed for retail sale, except perishable sandwiches, salads, or other products with a shelf life of less than 3 days.

(d) LABELING STANDARD.—

(1) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) for any producer, importer, exporter, distributor, or seller of any tuna product that is exported from or offered for sale in the United States to include on the label of that product the term “dolphin safe” or any other term or symbol that falsely claims or suggests that the tuna contained in the product were harvested using a method of fishing that is not harmful to dolphins if the product contains tuna harvested—

(A) on the high seas by a vessel engaged in driftnet fishing;

(B) outside the eastern tropical Pacific Ocean by a vessel using purse seine nets—

(i) in a fishery in which the Secretary has determined that a regular and significant association occurs between dolphins and tuna (similar to the association between dolphins and tuna in the eastern tropical Pacific Ocean), unless such product is accompanied by a written statement, executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary, certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna were caught and no dolphins were killed or seriously injured in the sets in which the tuna were caught; or

(ii) in any other fishery (other than a fishery described in subparagraph (D)) unless the product is accompanied by a written statement executed by the

captain of the vessel certifying that no purse seine net was intentionally deployed on or used to encircle dolphins during the particular voyage on which the tuna was harvested;

(C) in the eastern tropical Pacific Ocean by a vessel using a purse seine net unless the tuna meet the requirements for being considered dolphin safe under paragraph (2); or

(D) by a vessel in a fishery other than one described in subparagraph (A), (B), or (C) that is identified by the Secretary as having a regular and significant mortality or serious injury of dolphins, unless such product is accompanied by a written statement executed by the captain of the vessel and an observer participating in a national or international program acceptable to the Secretary that no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught, provided that the Secretary determines that such an observer statement is necessary.

(2) For purposes of paragraph (1)(C), a tuna product that contains tuna harvested in the eastern tropical Pacific Ocean by a vessel using purse seine nets is dolphin safe if—

(A) the vessel is of a type and size that the Secretary has determined, consistent with the International Dolphin Conservation Program, is not capable of deploying its purse seine nets on or to encircle dolphins; or

(B)(i) the product is accompanied by a written statement executed by the captain providing the certification required under subsection (h);

(ii) the product is accompanied by a written statement executed by—

(I) the Secretary or the Secretary's designee;

(II) a representative of the Inter-American Tropical Tuna Commission; or

(III) an authorized representative of a participating nation whose national program meets the requirements of the International Dolphin Conservation Program,

which states that there was an observer approved by the International Dolphin Conservation Program on board the vessel during the entire trip and that such observer provided the certification required under subsection (h); and

(iii) the statements referred to in clauses (i) and (ii) are endorsed in writing by each exporter, importer, and processor of the product; and

(C) the written statements and endorsements referred to in subparagraph (B) comply with regulations promulgated by the Secretary which provide for the verification of tuna products as dolphin safe.

(3)(A) The Secretary of Commerce shall develop an official mark that may be used to label tuna products as dolphin safe in accordance with this Act.

(B) A tuna product that bears the dolphin safe mark developed under subparagraph (A) shall not bear any other label or mark that refers to dolphins, porpoises, or marine mammals.

(C) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to label a tuna product with any label or mark that refers to dolphins, porpoises, or marine mammals other than the mark developed under subparagraph (A) unless—

(i) no dolphins were killed or seriously injured in the sets or other gear deployments in which the tuna were caught;

(ii) the label is supported by a tracking and verification program which is comparable in effectiveness to the program established under subsection (f); and

(iii) the label complies with all applicable labeling, marketing, and advertising laws and regulations of the Federal Trade Commission, including any guidelines for environmental labeling.

(D) If the Secretary determines that the use of a label referred to in subparagraph (C) is substantially undermining the conservation goals of the International Dolphin Conservation Program, the Secretary shall report that determination to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, along with recommendations to correct such problems.

(E) It is a violation of section 5 of the Federal Trade Commission Act (15 U.S.C. 45) willingly and knowingly to use a label referred to in subparagraph (C) in a campaign or effort to mislead or deceive consumers about the level of protection afforded dolphins under the International Dolphin Conservation Program.

*(4) It is a violation of section 101 of the International Fisheries Stewardship and Enforcement Act for any person to assault, resist, oppose, impede, intimidate, or interfere with and authorized officer in the conduct of any search, investigation or inspection under this Act.*

**[(e) ENFORCEMENT.—Any person who knowingly and willfully makes a statement or endorsement described in subsection (d)(2)(B) that is false is liable for a civil penalty of not to exceed \$100,000 assessed in an action brought in any appropriate district court of the United States on behalf of the Secretary.]**

*(e) ENFORCEMENT.—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

(f) REGULATIONS.—The Secretary, in consultation with the Secretary of the Treasury, shall issue regulations to implement this Act, including regulations to establish a domestic tracking and verification program that provides for the effective tracking of tuna labeled under subsection (d). In the development of these regulations, the Secretary shall establish appropriate procedures for ensuring the confidentiality of proprietary information the submission of which is voluntary or mandatory. The regulations shall address each of the following items:

(1) The use of weight calculation for purposes of tracking tuna caught, landed, processed, and exported.

(2) Additional measures to enhance current observer coverage, including the establishment of criteria for training, and

for improving monitoring and reporting capabilities and procedures.

(3) The designation of well location, procedures for sealing holds, procedures for monitoring and certifying both above and below deck, or through equally effective methods, the tracking and verification of tuna labeled under subsection (d).

(4) The reporting, receipt, and database storage of radio and facsimile transmittals from fishing vessels containing information related to the tracking and verification of tuna, and the definition of set.

(5) The shore-based verification and tracking throughout the fishing, transshipment, and canning process by means of Inter-American Tropical Tuna Commission trip records or otherwise.

(6) The use of periodic audits and spot checks for caught, landed, and processed tuna products labeled in accordance with subsection (d).

(7) The provision of timely access to data required under this subsection by the Secretary from harvesting nations to undertake the actions required in paragraph (6) of this paragraph. The Secretary may make such adjustments as may be appropriate to the regulations promulgated under this subsection to implement an international tracking and verification program that meets or exceeds the minimum requirements established by the Secretary under this subsection.

(g) SECRETARIAL FINDINGS.—

(1) Between March 1, 1999, and March 31, 1999, the Secretary shall, on the basis of the research conducted before March 1, 1999, under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make an initial finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The initial finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(2) Between July 1, 2001, and December 31, 2002, the Secretary shall, on the basis of the completed study conducted under section 304(a) of the Marine Mammal Protection Act of 1972, information obtained under the International Dolphin Conservation Program, and any other relevant information, make a finding regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean. The finding shall be published immediately in the Federal Register and shall become effective upon a subsequent date determined by the Secretary.

(h) CERTIFICATION BY CAPTAIN AND OBSERVER.—

(1) Unless otherwise required by paragraph (2), the certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified in subsection (d)(2)(B)(ii) shall be that no dolphins were killed or seriously injured during the sets in which the tuna were caught.

(2) The certification by the captain under subsection (d)(2)(B)(i) and the certification provided by the observer as specified under subsection (d)(2)(B)(ii) shall be that no tuna were caught on the trip in which such tuna were harvested using a purse seine net intentionally deployed on or to encircle dolphins, and that no dolphins were killed or seriously injured during the sets in which the tuna were caught, if the tuna were caught on a trip commencing—

(A) before the effective date of the initial finding by the Secretary under subsection (g)(1);

(B) after the effective date of such initial finding and before the effective date of the finding of the Secretary under subsection (g)(2), where the initial finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any depleted dolphin stock; or

(C) after the effective date of the finding under subsection (g)(2), where such finding is that the intentional deployment on or encirclement of dolphins is having a significant adverse impact on any such depleted stock.

#### MARINE MAMMAL PROTECTION ACT

#### SEC. 304. RESEARCH.

[16 U.S.C. 1414a]

##### (a) REQUIRED RESEARCH.—

(1) IN GENERAL.—The Secretary shall, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission, conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean. The study, which shall commence on October 1, 1997, shall consist of abundance surveys as described in paragraph (2) and stress studies as described in paragraph (3), and shall address the question of whether such encirclement is having a significant adverse impact on any depleted dolphin stock in the eastern tropical Pacific Ocean.

(2) POPULATION ABUNDANCE SURVEYS.—The abundance surveys under this subsection shall survey the abundance of such depleted stocks and shall be conducted during each of the calendar years 1998, 1999, and 2000.

(3) STRESS STUDIES.—The stress studies under this subsection shall include—

(A) a review of relevant stress-related research and a 3-year series of necropsy samples from dolphins obtained by commercial vessels;

(B) a 1-year review of relevant historical demographic and biological data related to dolphins and dolphin stocks referred to in paragraph (1); and

(C) an experiment involving the repeated chasing and capturing of dolphins by means of intentional encirclement.

(4) REPORT.—No later than 90 days after publishing the finding under subsection (g)(2) of the Dolphin Protection Consumer

Information Act, the Secretary shall complete and submit a report containing the results of the research described in this subsection to the United States Senate Committee on Commerce, Science, and Transportation and the United States House of Representatives Committees on Resources and on Commerce, and to the Inter-American Tropical Tuna Commission.

(b) OTHER RESEARCH.—

(1) IN GENERAL.—In addition to conducting the research described in subsection (a), the Secretary shall, in consultation with the Marine Mammal Commission and in cooperation with the nations participating in the International Dolphin Conservation Program and the Inter-American Tropical Tuna Commission, undertake or support appropriate scientific research to further the goals of the International Dolphin Conservation Program.

(2) SPECIFIC AREAS OF RESEARCH.—Research carried out under paragraph (1) may include—

(A) projects to devise cost-effective fishing methods and gear so as to reduce, with the goal of eliminating, the incidental mortality and serious injury of marine mammals in connection with commercial purse seine fishing in the eastern tropical Pacific Ocean;

(B) projects to develop cost-effective methods of fishing for mature yellowfin tuna without setting nets on dolphins or other marine mammals;

(C) projects to carry out stock assessments for those marine mammal species and marine mammal stocks taken in the purse seine fishery for yellowfin tuna in the eastern tropical Pacific Ocean, including species or stocks not within waters under the jurisdiction of the United States; and

(D) projects to determine the extent to which the incidental take of nontarget species, including juvenile tuna, occurs in the course of purse seine fishing for yellowfin tuna in the eastern tropical Pacific Ocean, the geographic location of the incidental take, and the impact of that incidental take on tuna stocks and nontarget species.

(c) AUTHORIZATION OF APPROPRIATIONS.—

(1) There are authorized to be appropriated to the Secretary the following amounts, to be used by the Secretary to carry out the research described in subsection (a):

(A) \$4,000,000 for fiscal year 1998.

(B) \$3,000,000 for fiscal year 1999.

(C) \$4,000,000 for fiscal year 2000.

(D) \$1,000,000 for fiscal year 2001.

(E) *\$1,000,000 for each of fiscal years 2009 through 2013.*

(2) In addition to the amount authorized to be appropriated under paragraph (1), there are authorized to be appropriated to the Secretary for carrying out this section \$3,000,000 for each of the fiscal years 1998, 1999, 2000, and 2001.

## HIGH SEAS DRIFTNET FISHERIES ENFORCEMENT ACT

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

[16 U.S.C. 1826a]

## (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); and

[(B) deny entry of that vessel to any place in the United States and to the navigable waters of the United States.]

(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 60105 of title 46, United States Code, for—*

*(i) any large-scale driftnet fishing vessel that is documented under the law of the United States or of a nation included on a list published under paragraph (1); or*

*(ii) any fishing vessel of a nation that receives 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) or 1826k(c)); 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 purpose of inspecting the 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]

(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.] nation; or

(iii) upon receipt of notification of a negative certification under section 609(d)(1) or 610(c)(1) of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826j(d)(1) or 1826k(c)(1)).

(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 after issuing a negative certification under section 609(d)(1) or

610(c)(1) of the *High Seas Driftnet Fishing Moratorium Protection Act* (16 U.S.C. 1826j(d)(1) or 1826k(c)(1), 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]

(i) any prohibition established under paragraph (3) is insufficient to cause that nation—

(I) to terminate large-scale driftnet fishing conducted by its nationals and vessels beyond the exclusive economic zone of any nation;

(II) to address illegal, unreported, or unregulated fishing activities for which a nation has been identified under section 609 of the *High Seas Driftnet Fishing Moratorium Protection Act* (16 U.S.C. 1826j); or

(III) to address bycatch of a protected living marine resource for which a nation has been identified under section 610 of such Act (16 U.S.C. 1826k); 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.

[16 U.S.C. 1826b]

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.] *such nation has—*

(1) terminated large-scale driftnet fishing by its nationals and vessels beyond the exclusive economic zone of any nation;

(2) addressed illegal, unreported, or unregulated fishing activities for which a nation has been identified under section 609 of the *High Seas Driftnet Fishing Moratorium Protection Act* (16 U.S.C. 1826j); or

(3) addressed bycatch of a protected living marine resource for which a nation has been identified under section 610 of that Act (16 U.S.C. 1826k).

HIGH SEAS DRIFTNET FISHING MORATORIUM PROTECTION  
ACT

**SEC. 606. ENFORCEMENT.**

[16 U.S.C. 1826g]

(a) *DETECTING, MONITORING, AND PREVENTING VIOLATIONS.*—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.

(b) *ENFORCEMENT.*—This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.

**SEC. 607. BIENNIAL REPORT ON INTERNATIONAL COMPLIANCE.**

[16 U.S.C. 1826h]

The Secretary, in consultation with the Secretary of State, shall provide to Congress, by not later than 2 years after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, and every 2 years thereafter, a report that includes—

(1) the state of knowledge on the status of international living marine resources shared by the United States or subject to treaties or agreements to which the United States is a party, including a list of all such fish stocks classified as overfished, overexploited, depleted, endangered, or threatened with extinction by any international or other authority charged with management or conservation of living marine resources;

(2) a list of nations [whose vessels] *that* have been identified under section 609(a) or 610(a), including the specific offending activities and any subsequent actions taken pursuant to section 609 or 610;

(3) a description of efforts taken by nations on those lists to comply take appropriate corrective action consistent with sections 609 and 610, and an evaluation of the progress of those efforts, including steps taken by the United States to implement those sections and to improve international compliance;

(4) progress at the international level, consistent with section 608, to strengthen the efforts of international fishery management organizations to end illegal, unreported, or unregulated fishing; and

(5) steps taken by the Secretary at the international level to adopt international measures comparable to those of the United States to reduce impacts of fishing and other practices on protected living marine resources, if no international agreement to achieve such goal exists, or if the relevant international fishery or conservation organization has failed to implement effective measures to end or reduce the adverse impacts of fishing practices on such species.

**SEC. 608. ACTION TO STRENGTHEN INTERNATIONAL FISHERY MANAGEMENT ORGANIZATIONS,**

[16 U.S.C. 1826i]

(a) *IN GENERAL.*—The Secretary, in consultation with the Secretary of State, and in cooperation with relevant fishery management councils and any relevant advisory committees, shall take actions to improve the effectiveness of international fishery management  ~~[organizations]~~ *organizations, or arrangements made pursuant to an international fishery agreement (as defined in section 3(24) of the Magnuson-Stevens Fishery Conservation and Management Act), in conserving and managing fish stocks under their jurisdiction. These actions shall include—*

(1) urging international fishery management organizations to which the United States is a member—

(A) to incorporate multilateral market-related measures against member or nonmember governments whose vessels engage in illegal, unreported, or unregulated fishing;

(B) to seek adoption of lists that identify fishing vessels and vessel owners engaged in illegal, unreported, or unregulated fishing that can be shared among all members and other international fishery management organizations;

(C) to seek international adoption of a centralized vessel monitoring system in order to monitor and document capacity in fleets of all nations involved in fishing in areas under an international fishery management organization's jurisdiction;

(D) to increase use of observers and technologies needed to monitor compliance with conservation and management measures established by the organization, including vessel monitoring systems and automatic identification systems; and

(E) to seek adoption of stronger port state controls in all nations, particularly those nations in whose ports vessels engaged in illegal, unreported, or unregulated fishing land or transship fish;

(2) urging international fishery management organizations to which the United States is a member, as well as all members of those organizations, to adopt and expand the use of market-related measures to combat illegal, unreported, or unregulated fishing, including—

(A) import prohibitions, landing restrictions, or other market-based measures needed to enforce compliance with international fishery management organization measures, such as quotas and catch limits;

(B) import restrictions or other market-based measures to prevent the trade or importation of fish caught by vessels identified multilaterally as engaging in illegal, unreported, or unregulated fishing; and

(C) catch documentation and certification schemes to improve tracking and identification of catch of vessels engaged in illegal, unreported, or unregulated fishing, including advance transmission of catch documents to ports of entry;  ~~[and]~~

(3) urging other nations at bilateral, regional, and international levels, including the Convention on International

Trade in Endangered Species of Fauna and Flora and the World Trade Organization to take all steps necessary, consistent with international law, to adopt measures and policies that will prevent fish or other living marine resources harvested by vessels engaged in illegal, unreported, or unregulated fishing from being traded or imported into their nation or [territories.] territories; and

(4) *urging other nations, through the regional fishery management organizations of which the United States is a member, bilaterally and otherwise to seek and foster the sharing of accurate, relevant, and timely information—*

(A) *to improve the scientific understanding of marine ecosystems;*

(B) *to improve fisheries management decisions;*

(C) *to promote the conservation of protected living marine resources;*

(D) *to combat illegal, unreported, and unregulated fishing; and*

(E) *to improve compliance with conservation and management measures in international waters.*

(b) *INFORMATION SHARING.—In carrying out this section, the Secretary may disclose, as necessary and appropriate, information to the Food and Agriculture Organization of the United Nations, international fishery management organizations (as so defined), or arrangements made pursuant to an international fishery agreement, if such organizations or arrangements have policies and procedures to safeguard such information from unintended or unauthorized disclosure.*

(c) *VESSELS AND VESSEL OWNERS ENGAGED IN ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.—The Secretary may—*

(1) *develop, maintain, and make public a list of vessels and vessel owners engaged in 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, whether or not the United States is a party to such organization or arrangement;*

(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 and trade agreements; and*

(3) *provide notification to the public of vessels and vessel owners identified by international fishery management organizations or arrangements made pursuant to an international fishery agreement as having been engaged in illegal, unreported, or unregulated fishing, as well as any measures adopted by such organizations or arrangements to address illegal, unreported, or unregulated fishing.*

(d) *RESTRICTIONS ON PORT ACCESS OR USE.—Action taken by the Secretary under subsection (c)(2) that includes measures to restrict use of or access to ports or port services shall apply to all ports of the United States and its territories.*

(e) *REGULATIONS.*—*The Secretary may promulgate regulations to implement subsections (c) and (d).*

**SEC. 609. ILLEGAL, UNREPORTED, OR UNREGULATED FISHING.**

[16 U.S.C. 1826j]

[(a) **IDENTIFICATION.**—The Secretary shall identify, and list in the report under section 607, a nation if fishing vessels of that nation are engaged, or have been engaged at any point during the preceding 2 years, in illegal, unreported, or unregulated fishing—

[(1) the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by vessels of that nation or the nation is not a party to, or does not maintain cooperating status with, such organization; or

[(2) where no international fishery management organization exists with a mandate to regulate the fishing activity in question.]

(a) **IDENTIFICATION.**—

(1) *IN GENERAL.*—*The Secretary shall identify, and list in the report under section 607, a nation if that nation is engaged, or has been engaged at any time during the preceding 3 years, in illegal, unreported, or unregulated fishing and—*

(A) *such fishing undermines the effectiveness of measures required under the relevant international fishery management organization;*

(B) *the relevant international fishery management organization has failed to implement effective measures to end the illegal, unreported, or unregulated fishing activity by vessels of that nation, or the nation is not a party to, or does not maintain cooperating status with, such organization; or*

(C) *there is no international fishery management organization with a mandate to regulate the fishing activity in question.*

(2) **OTHER IDENTIFYING ACTIVITIES.**—*The Secretary shall also identify, and list in the report under section 607, a nation if—*

(A) *it is violating, or has violated at any time during the preceding 3 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, taking into account the factors described in paragraph (1); or*

(B) *it is failing, or has failed at any time during the preceding 3 years, to effectively address or regulate illegal, unreported, or unregulated fishing in areas described in paragraph (1)(C).*

(3) **TREATMENT OF CERTAIN ENTITIES AS IF THEY WERE NATIONS.**—*Where the provisions of this Act apply to the act, or failure to act, of a nation, they shall also be applicable, as appropriate, to any other entity that is competent to enter into an international fishery management agreement.*

(b) **NOTIFICATION.**—An identification under subsection (a) or section 610(a) is deemed to be an identification under section 101(b)(1)(A) of the High Seas Driftnet Fisheries Enforcement Act (16 U.S.C. 1826a(b)(1)(A)), and the Secretary shall notify the President and that nation of such identification.

(c) CONSULTATION.—No later than 60 days after submitting a report to Congress under section 607, the Secretary, acting through the Secretary of State, shall—

(1) notify nations listed in the report of the requirements of this section;

(2) initiate consultations for the purpose of encouraging such nations to take the appropriate corrective action with respect to the offending activities of their fishing vessels identified in the report; and

(3) notify any relevant international fishery management organization of the actions taken by the United States under this section.

(d) IUU CERTIFICATION PROCEDURE.—

(1) CERTIFICATION.—The Secretary shall establish a procedure, consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, for determining if a nation identified under subsection (a) and listed in the report under section 607 has taken appropriate corrective action with respect to the offending activities **【of its fishing vessels】** identified in the report under section 607. The certification procedure shall provide for notice and an opportunity for comment by any such nation. The Secretary shall determine, on the basis of the procedure, and certify to the Congress no later than 90 days after the date on which the Secretary promulgates a final rule containing the procedure, and biennially thereafter in the report under section 607—

(A) whether the government of each nation identified under subsection (a) has provided documentary evidence that it has taken corrective action with respect to the offending activities **【of its fishing vessels】** identified in the report; or

(B) whether the relevant international fishery management organization has implemented measures that are effective in ending the illegal, unreported, or unregulated fishing activity by vessels of that nation.

(2) ALTERNATIVE PROCEDURE.—The Secretary may establish a **【procedure for certification,】** *procedure*, on a shipment-by-shipment, shipper-by-shipper, or other **【basis of fish】** *basis*, for allowing importation of fish or fish products from a vessel of a **【harvesting nation not certified under paragraph (1)】** *nation issued a negative certification under paragraph (1)* if the Secretary determines that—

(A) the vessel has not engaged in illegal, unreported, or unregulated fishing under an international fishery management agreement to which the United States is a party; or

(B) the vessel is not identified by an international fishery management organization as participating in illegal, unreported, or unregulated fishing activities.

(3) EFFECT OF CERTIFICATION.—

(A) IN GENERAL.—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4))—

(i) shall apply to any nation identified under subsection (a) **【that has not been certified by the Sec-**

retary under this subsection, or] for which the Secretary has issued a negative certification under this subsection; but

(ii) shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

(B) EXCEPTIONS.—Subparagraph (A)(i) does not apply—

(i) to the extent that such provisions would apply to sport fishing equipment or to fish or fish products not managed under the applicable international fishery agreement; or

(ii) if there is no applicable international fishery agreement, to the extent that such provisions would apply to fish or fish products caught by vessels not engaged in illegal, unreported, or unregulated fishing.

(e) ILLEGAL, UNREPORTED, OR UNREGULATED FISHING DEFINED.—

(1) IN GENERAL.—In this Act the term “illegal, unreported, or unregulated fishing” has the meaning established under paragraph (2).

(2) Secretary to define term within legislative guidelines. Within 3 months after the date of enactment of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, the Secretary shall publish a definition of the term “illegal, unreported, or unregulated fishing” for purposes of this Act.

(3) GUIDELINES.—The Secretary shall include in the definition, at a minimum—

(A) 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;

(B) overfishing of fish stocks shared by the United States, for which there are no applicable international conservation or management measures or in areas with no applicable international fishery management organization or agreement, that has adverse impacts on such stocks; and

(C) 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.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 2007 through 2013 such sums as are necessary to carry out this section.

**SEC. 610. EQUIVALENT CONSERVATION MEASURES.**

[16 U.S.C. 1826k]

(a) IDENTIFICATION.—The Secretary shall identify, and list in the report under section 607, a nation if—

(1) fishing vessels of that nation are engaged, or have been engaged during the preceding [calendar year] 3 years in fishing activities or [practices;] *practices*—

(A) in waters beyond any national jurisdiction that result in bycatch of a protected living marine resource; or

- (B) beyond the exclusive economic zone of the United States that result in bycatch of a protected living marine resource shared by the United States;
- (2) the relevant international organization for the conservation and protection of such resources or the relevant international or regional fishery organization has failed to implement effective measures to end or reduce such bycatch, or the nation is not a party to, or does not maintain cooperating status with, such organization; and
- (3) the nation has not adopted a regulatory program governing such fishing practices designed to end or reduce such bycatch that is comparable to that of the United States, taking into account different conditions.
- (b) CONSULTATION AND NEGOTIATION.—The Secretary, acting through the Secretary of State, shall—
- (1) notify, as soon as possible, other nations whose vessels engage in fishing activities or practices described in subsection (a), about the provisions of this section and this Act;
- (2) initiate discussions as soon as possible with all foreign governments which are engaged in, or which have persons or companies engaged in, fishing activities or practices described in subsection (a), for the purpose of entering into bilateral and multilateral treaties with such countries to protect such species;
- (3) seek agreements calling for international restrictions on fishing activities or practices described in subsection (a) through the United Nations, the Food and Agriculture Organization's Committee on Fisheries, and appropriate international fishery management bodies; and
- (4) initiate the amendment of any existing international treaty for the protection and conservation of such species to which the United States is a party in order to make such treaty consistent with the purposes and policies of this section.
- (c) CONSERVATION CERTIFICATION PROCEDURE.—
- (1) DETERMINATION.—The Secretary shall establish a procedure consistent with the provisions of subchapter II of chapter 5 of title 5, United States Code, for determining whether the government of a harvesting nation identified under subsection (a) and listed in the report under section 607—
- (A) has provided documentary evidence of the adoption of a regulatory program governing the conservation of the protected living marine resource that is comparable to that of the United States, taking into account different conditions, and which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and
- (B) has established a management plan containing requirements that will assist in gathering species-specific data to support international stock assessments and conservation enforcement efforts for protected living marine resources.
- (2) PROCEDURAL REQUIREMENT.—The procedure established by the Secretary under paragraph (1) shall include notice and opportunity for comment by any such nation.

(3) CERTIFICATION.—The Secretary shall certify to the Congress by January 31, 2007, and biennially thereafter whether each such nation has provided the documentary evidence described in paragraph (1)(A) and established a management plan described in paragraph (1)(B).

(4) ALTERNATIVE PROCEDURE.—The Secretary shall establish a procedure for certification, on a shipment-by-shipment, shipper-by-shipper, or other basis of fish or fish products from a vessel of a harvesting nation not certified under paragraph (3) 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 which, in the case of pelagic longline fishing, includes mandatory use of circle hooks, careful handling and release equipment, and training and observer programs; and

(B) include the gathering of species specific data that can be used to support international and regional stock assessments and conservation efforts for protected living marine resources.

(5) EFFECT OF CERTIFICATION.—The provisions of section 101(a) and section 101(b)(3) and (4) of this Act (16 U.S.C. 1826a(a), (b)(3), and (b)(4)) (except to the extent that such provisions apply to sport fishing equipment or fish or fish products not caught by the vessels engaged in illegal, unreported, or unregulated fishing) shall apply to any nation identified under subsection (a) [that has not been certified by the Secretary under this subsection, or] for which the Secretary has issued a negative certification under this subsection, but shall not apply to any nation identified under subsection (a) for which the Secretary has issued a positive certification under this subsection.

(d) INTERNATIONAL COOPERATION AND ASSISTANCE.—To the greatest extent possible consistent with existing authority and the availability of funds, the Secretary shall—

(1) provide appropriate assistance to nations identified by the Secretary under subsection (a) and international organizations of which those nations are members to assist those nations in qualifying for certification under subsection (c);

(2) undertake, where appropriate, cooperative research activities on species statistics and improved harvesting techniques, with those nations or organizations;

(3) encourage and facilitate the transfer of appropriate technology to those nations or organizations to assist those nations in qualifying for certification under subsection (c); and

(4) provide assistance to those nations or organizations in designing and implementing appropriate fish harvesting plans.

(e) PROTECTED LIVING MARINE RESOURCE DEFINED.—In this section the term “protected living marine resource”—

(1) means non-target fish, sea turtles, or marine mammals that are protected under United States law or international agreement, including the Marine Mammal Protection Act, the Endangered Species Act, the Shark Finning Prohibition Act,

and the Convention on International Trade in Endangered Species of Wild Flora and Fauna; but

(2) does not include species, except sharks, managed under the Magnuson-Stevens Fishery Conservation and Management Act, the Atlantic Tunas Convention Act, or any international fishery management agreement.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary for fiscal years 2007 through 2013 such sums as are necessary to carry out this section.

## MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT ACT

### SEC. 402. INFORMATION COLLECTION.

[16 U.S.C. 1881a]

#### (a) COLLECTION PROGRAMS.—

(1) COUNCIL REQUESTS.—If a Council determines that additional information would be beneficial for developing, implementing, or revising a fishery management plan or for determining whether a fishery is in need of management, the Council may request that the Secretary implement an information collection program for the fishery which would provide the types of information specified by the Council. The Secretary shall undertake such an information collection program if he determines that the need is justified, and shall promulgate regulations to implement the program within 60 days after such determination is made. If the Secretary determines that the need for an information collection program is not justified, the Secretary shall inform the Council of the reasons for such determination in writing. The determinations of the Secretary under this paragraph regarding a Council request shall be made within a reasonable period of time after receipt of that request.

(2) SECRETARIAL INITIATION.—If the Secretary determines that additional information is necessary for developing, implementing, revising, or monitoring a fishery management plan, or for determining whether a fishery is in need of management, the Secretary may, by regulation, implement an information collection or observer program requiring submission of such additional information for the fishery.

#### (b) CONFIDENTIALITY OF INFORMATION.—

(1) Any information submitted to the Secretary, a State fishery management agency, or a marine fisheries commission by any person in compliance with the requirements of this Act shall be confidential and shall not be disclosed except—

(A) to Federal employees and Council employees who are responsible for fishery management plan development, monitoring, or enforcement;

(B) to State or Marine Fisheries Commission employees as necessary to further the Department's mission, subject to a confidentiality agreement that prohibits public disclosure of the identity of business of any person;

(C) to State employees who are responsible for fishery management plan enforcement, if the States employing those employees have entered into a fishery enforcement

agreement with the Secretary and the agreement is in effect;

(D) when required by court order;

(E) when such information is used by State, Council, or Marine Fisheries Commission employees to verify catch under a limited access program, but only to the extent that such use is consistent with subparagraph (B);

(F) 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;

(G) when such information is required to be submitted to the Secretary for any determination under a limited access program; **[or]**

*(H) to the Food and Agriculture Organization of the United Nations, international fishery management organizations, or arrangements made pursuant to an international fishery agreement as provided for in the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826i(b));*

*(I) to any other Federal or State government agency, foreign government, the Food and Agriculture Organization of the United Nations, or the secretariat or equivalent of an international fisheries management organization or arrangement made pursuant to an international fishery agreement, as provided in section 201(d)(6) of the International Fisheries Stewardship and Enforcement Act; or*

**[(H)]** *(J) in support of homeland and national security activities, including the Coast Guard's homeland security missions as defined in section 888(a)(2) of the Homeland Security Act of 2002 (6 U.S.C. 468(a)(2)).*

(2) Any observer information shall be confidential and shall not be disclosed, except in accordance with the requirements of subparagraphs (A) through (H) of paragraph (1), or—

(A) as authorized by a fishery management plan or regulations under the authority of the North Pacific Council to allow disclosure to the public of weekly summary bycatch information identified by vessel or for haul-specific bycatch information without vessel identification;

(B) when such information is necessary in proceedings to adjudicate observer certifications; or

(C) as authorized by any regulations issued under paragraph (3) allowing the collection of observer information, pursuant to a confidentiality agreement between the observers, observer employers, and the Secretary prohibiting disclosure of the information by the observers or observer employers, in order—

(i) to allow the sharing of observer information among observers and between observers and observer employers as necessary to train and prepare observers for deployments on specific vessels; or

(ii) to validate the accuracy of the observer information collected.

(3) 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 which does not directly or indirectly disclose the identity or business of any person who submits such information. Nothing in this subsection shall be interpreted or construed to prevent the use for conservation and management purposes by the Secretary, or with the approval of the Secretary, the Council, of any information submitted in compliance with any requirement or regulation under this Act or the use, release, or publication of bycatch information pursuant to paragraph (2)(A).

(c) RESTRICTION ON USE OF CERTAIN INFORMATION.—

(1) The Secretary shall promulgate regulations to restrict the use, in civil enforcement or criminal proceedings under this Act, the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.), and the Endangered Species Act (16 U.S.C. 1531 et seq.), of information collected by voluntary fishery data collectors, including sea samplers, while aboard any vessel for conservation and management purposes if the presence of such a fishery data collector aboard is not required by any of such Acts or regulations thereunder.

(2) The Secretary may not require the submission of a Federal or State income tax return or statement as a prerequisite for issuance of a permit until such time as the Secretary has promulgated regulations to ensure the confidentiality of information contained in such return or statement, to limit the information submitted to that necessary to achieve a demonstrated conservation and management purpose, and to provide appropriate penalties for violation of such regulations.

(d) CONTRACTING AUTHORITY.—Notwithstanding any other provision of law, the Secretary may provide a grant, contract, or other financial assistance on a sole-source basis to a State, Council, or Marine Fisheries Commission for the purpose of carrying out information collection or other programs if—

(1) the recipient of such a grant, contract, or other financial assistance is specified by statute to be, or has customarily been, such State, Council, or Marine Fisheries Commission; or

(2) the Secretary has entered into a cooperative agreement with such State, Council, or Marine Fisheries Commission.

(e) RESOURCE ASSESSMENTS.—

(1) The Secretary may use the private sector to provide vessels, equipment, and services necessary to survey the fishery resources of the United States when the arrangement will yield statistically reliable results.

(2) The Secretary, in consultation with the appropriate Council and the fishing industry—

(A) may structure competitive solicitations under paragraph (1) so as to compensate a contractor for a fishery resources survey by allowing the contractor to retain for sale fish harvested during the survey voyage;

(B) in the case of a survey during which the quantity or quality of fish harvested is not expected to be adequately

compensatory, may structure those solicitations so as to provide that compensation by permitting the contractor to harvest on a subsequent voyage and retain for sale a portion of the allowable catch of the surveyed fishery; and

(C) may permit fish harvested during such survey to count toward a vessel's catch history under a fishery management plan if such survey was conducted in a manner that precluded a vessel's participation in a fishery that counted under the plan for purposes of determining catch history.

(3) The Secretary shall undertake efforts to expand annual fishery resource assessments in all regions of the Nation.

## ANTARCTIC MARINE LIVING RESOURCES CONVENTION ACT OF 1984

### SEC. 306. UNLAWFUL ACTIVITIES.

[16 U.S.C. 2435]

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 or inspection] *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 or inspection] *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.] *section; or*

(8) *to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to*

*be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.*

**SEC. 307. REGULATIONS.**

[16 U.S.C. 2436]

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. *Notwithstanding the provisions of 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 rule to implement conservation measures, described in section 305(a) of this Act, that are in effect for 12 months or less, adopted by the Commission, and not objected to by the United States within the time period allotted under Article IX of the Convention. Upon publication in the Federal Register, such conservation measures shall be in force with respect to the United States.*

**[SEC. 308. CIVIL PENALTIES.**

[16 U.S.C. 2437]

**[(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.

**[(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.

**[SEC. 309. CRIMINAL OFFENSES.**

[16 U.S.C. 2438]

[(a) OFFENSES.—A person is guilty of an offense if that person commits any act prohibited by paragraph (4), (5), (6), or (7) of section 306.

[(b) PUNISHMENT.—Any offense described in subsection (a) is punishable by a fine of \$50,000, or imprisonment for not more than ten years, or both.

[(c) OFFENSES UNDER OTHER LAWS.—A conviction under subsection (a) for any act shall not be deemed to preclude a conviction for such act under any other law.]

**SEC. 310. ENFORCEMENT.**

[16 U.S.C. 2439]

(a) RESPONSIBILITY.—The provisions of this title shall be enforced by the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may utilize by agreement, on a reimbursable basis or otherwise, the personnel, services, and facilities of any other department or agency of the United States in the performance of such duties.

[(b) POWERS OF AUTHORIZED OFFICERS AND EMPLOYEES.—Any officer or employee of the United States who is authorized (by the Secretary of Commerce, the Secretary of the department in which the Coast Guard is operating, or the head of any department or agency of the United States which has entered into an agreement with either Secretary under subsection (a)) to enforce the provisions of this title and of any regulation promulgated under this title may, in enforcing such provisions—

[(1) secure, execute, and serve any order, warrant, subpoena, or other process, which is issued under the authority of the United States;

[(2) search without warrant any person, place, vehicle or aircraft subject to the jurisdiction of the United States where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 306,

[(3) with or without a warrant board and search or inspect any vessel of the United States or vessel subject to the jurisdiction of the United States;

[(4) seize without warrant—

[(A) any evidentiary item where there are reasonable grounds to believe that a person has committed or is attempting to commit an act prohibited by section 306,

[(B) any Antarctic marine living resources (or part of product thereof) with respect to which such an act is committed,

[(C) any vessel of the United States (including its gear, furniture, appurtenances, stores, and cargo), any vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stores, and cargo), and any vehicle, aircraft, or other means of transportation subject to the jurisdiction of the United States used in connection with such an act, and

[(D) any guns, traps, nets, or equipment used in connection with such an act;

[(5) offer and pay rewards for services or information which may lead to the apprehension of persons violating such provisions;

[(6) make inquiries, and administer to, or take from, any person an oath, affirmation, or affidavit, concerning any matter which is related to the enforcement of such provisions;

[(7) in coordination with the Secretary of the Treasury, detain for inspection and inspect any package, crate, or other container, including its contents, and all accompanying documents, upon importation into, or exportation from, the United States;

[(8) make an arrest with or without a warrant with respect to any act prohibited by paragraph (4), (5), (6), or (7) of section 306 if such officer or employee has reasonable grounds to believe that the person to be arrested is committing such act in his or her presence or view or has committed such act;

[(9) exercise enforcement powers conferred on such officer or employee under a system of observation and inspection, or interim arrangements pending the establishment of such a sys-

tem, which the Secretary of State has agreed to on behalf of the United States pursuant to section 305(b); and

[(10) exercise any other authority which such officer or employee is permitted by law to exercise.

[(c) SEIZURE.—Subject to the succeeding provisions of this subsection, any property or item seized pursuant to subsection (b) shall be held by any officer or employee of the United States, who is authorized by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, pending the disposition of civil or criminal proceedings concerning the violation relating to the property or item, or the institution of an action in rem for the forfeiture of such property or item. Such authorized officer or employee may, upon the order of a court of competent jurisdiction, either release such seized property or item to the wild or destroy such property or item, when the cost of maintenance of the property or item pending the disposition of the case is greater than the legitimate market value of the property or item. Such authorized officer or employee and all officers or employees acting by or under his or her direction shall be indemnified from any penalties or actions for damages for so releasing or destroying such property or item. Such authorized officer or employee may, in lieu of holding such property or item, permit the owner or consignee thereof to post a bond or other satisfactory surety.

[(d) FORFEITURE.—

[(1) Any Antarctic marine living resource (or part of product thereof) with respect to which an act prohibited by section 306 is committed, any vessel of the United States (including its gear, furniture, appurtenances, stoves, and cargo), vessel subject to the jurisdiction of the United States (including its gear, furniture, appurtenances, stoves, and cargo), or vessel, vehicle, or aircraft or other means of transportation subject to the jurisdiction of the United States, which is used in connection with an act prohibited by section 306, and all guns, traps, nets, and other equipment used in connection with such act, shall be subject to forfeiture to the United States.

[(2) Upon the forfeiture to the United States of any property or item described in paragraph (1), or upon the abandonment or waiver of any claim to any such property or item, it shall be disposed of by the Secretary of Commerce, or the Secretary of the department in which the Coast Guard is operating, as the case may be, in such a manner, consistent with the purposes of this title, as may be prescribed by regulation.]

(b) *ADMINISTRATION AND ENFORCEMENT.*—*This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

[(e)] (c) APPLICATION OF CUSTOMS LAWS.—All provisions of law relating to the seizure, forfeiture, and condemnation of property (including vessels) for violation of the customs laws, the disposition of such property or the proceeds from the sale thereof, and the remission or mitigation of such forfeiture, shall apply to the seizures and forfeitures incurred, or alleged to have been incurred, and the compromise of claims, under the provisions of this title, insofar as such provisions of law are applicable and not inconsistent with the provisions of this title; except that all powers, rights, and duties conferred or imposed by the customs laws upon any officer or em-

ployee of the Customs Service may, for the purposes of this title, also be exercised or performed by the Secretary of Commerce or the Secretary of the department in which the Coast Guard is operating, or by such officers or employees of the United States as each Secretary may designate.

### PACIFIC SALMON TREATY ACT OF 1985

#### SEC. 8. PROHIBITED ACTS AND PENALTIES.

[16 U.S.C. 3637]

(a) UNLAWFUL ACTS.—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 or inspection] *search, investigation, or inspection* in connection with the enforcement of this title;

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

(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.] *section; or*

(7) *for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.*

[(b) CIVIL PENALTY.—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) CRIMINAL PENALTY.—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) FORFEITURE.—

[(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) ENFORCEMENT AUTHORITY.—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) JURISDICTION.—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) ADMINISTRATION AND ENFORCEMENT.—*This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

#### SEC. 11. ADMINISTRATIVE MATTERS.

[16 U.S.C. 3640]

(a) COMPENSATION OF COMMISSIONERS AND ALTERNATE COMMISSIONERS.—Commissioners and Alternate Commissioners who are not State or Federal employees shall receive compensation at the daily rate of GS-18 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(b) COMPENSATION OF PANEL MEMBERS AND ALTERNATE PANEL MEMBERS.—Panel Members and Alternate Panel Members who are not State or Federal employees shall receive compensation at the daily rate of GS-16 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(c) SCIENTIFIC COOPERATION COMMITTEE.—*Members of the Committee on Scientific Cooperation who are not State or Federal employees shall receive compensation at a rate equivalent to the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code, when engaged in actual performance of duties for the Commission.*

[(c)] (d) TRAVEL; OTHER EXPENSES.—Travel and other necessary expenses shall be paid for all United States Commissioners, Alternate Commissioners, Panel Members, Alternate Panel Members, members of the Joint Technical Committee, and members of the Advisory Committee when engaged in the actual performance of duties for the United States Section or for the Commission.

[(d)] (e) INDIVIDUALS NOT CONSIDERED FEDERAL EMPLOYEES.—Except for officials of the United States Government, such individuals shall not be considered to be Federal employees while engaged in the actual performance of duties for the United States Section or for the Commission, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 71 of title 28, United States Code.

**SEC. 16. NORTHERN AND SOUTHERN FUNDS; TREATY IMPLEMENTATION; ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.**

[16 U.S.C. 3645]

(a) **NORTHERN FUND AND SOUTHERN FUND.—**

(1) As provided in the June 30, 1999, Agreement of the United States and Canada on the Treaty Between the Government of the United States and the Government of Canada Concerning Pacific Salmon, 1985 (hereafter referred to as the “1999 Pacific Salmon Treaty Agreement”) there are hereby established a Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund (hereafter referred to as the “Northern Fund”) and a Southern Boundary Restoration and Enhancement Fund (hereafter referred to as the “Southern Fund”) to be held by the Pacific Salmon Commission. The Northern Fund and Southern Fund shall be invested in interest bearing accounts, bonds, securities, or other investments in order to achieve the highest annual yield consistent with protecting the principal of each Fund. Income from investments made pursuant to this paragraph shall be available until expended, without appropriation or fiscal year limitation, for programs and activities relating to salmon restoration and enhancement, salmon research, the conservation of salmon habitat, and implementation of the Pacific Salmon Treaty and related agreements. Amounts provided by grants under this subsection may be held in interest bearing accounts prior to the disbursement of such funds for program purposes, and any interest earned may be retained for program purposes without further appropriation. The Northern Fund and Southern Fund are subject to the laws governing Federal appropriations and funds and to unrestricted circulars of the Office of Management and Budget. Recipients of amounts from either Fund shall keep separate accounts and such records as are reasonably necessary to disclose the use of the funds as well as to facilitate effective audits.

(2) **FUND MANAGEMENT.—**

(A) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Northern Fund pursuant to paragraph (1) shall be administered by a Northern Fund Committee, which shall be comprised of three representatives of the Government of Canada, and three representatives of the United States. The three United States representatives shall be the United States Commissioner and Alternate Commissioner appointed (or designated) from a list submitted by the Governor of Alaska for appointment to the Pacific Salmon Commission and the Regional Administrator of the National Marine Fisheries Service for the Alaska Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area from Cape Caution, Canada to Cape Suckling, Alaska may be approved for funding by the Northern Fund Committee.

(B) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Southern Fund pursuant to paragraph (1) shall be administered by

a Southern Fund Committee, which shall be comprised of three representatives of Canada and three representatives of the United States. The United States representatives shall be appointed by the Secretary of Commerce: one shall be selected from a list of three qualified individuals submitted by the Governors of the States of Washington and Oregon; one shall be selected from a list of three qualified individuals submitted by the treaty Indian tribes (as defined by the Secretary of Commerce); and one shall be the Regional Administrator of the National Marine Fisheries Service for the Northwest Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area south of Cape Caution, Canada may be approved for funding by the Southern Fund Committee.

(b) PACIFIC SALMON TREATY IMPLEMENTATION.—

(1) None of the funds authorized by this section for implementation of the 1999 Pacific Salmon Treaty Agreement shall be made available until each of the following conditions to the 1999 Pacific Salmon Treaty Agreement has been fulfilled—

(A) stipulations are revised and court orders requested as set forth in the letter of understanding of the United States negotiators dated June 22, 1999. If such orders are not requested by December 31, 1999, this condition shall be considered unfulfilled; and

(B) a determination is made that—

(i) the entry by the United States into the 1999 Pacific Salmon Treaty Agreement;

(ii) the conduct of the Alaskan fisheries pursuant to the 1999 Pacific Salmon Treaty Agreement, without further clarification or modification of the management regimes contained therein; and

(iii) the decision by the North Pacific Fisheries Management Council to continue to defer its management authority over salmon to the State of Alaska are not likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93-205, as amended, in any fishery subject to the Pacific Salmon Treaty.

(2) If the requests for orders in subparagraph (1)(A) are withdrawn after December 31, 1999, or if such orders are not entered by March 1, 2000, amounts in the Northern Fund and the Southern Fund shall be transferred to the general fund of the United States Treasury.

(3) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce shall determine whether Southern United States fisheries are likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93-205, as amended, before the Secretary of Commerce may initiate or reinstitute consultation on Alaska fisheries under such Act.

(4) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce may not initiate or reinstitute consultation on Alaska fisheries under section 7 of Public Law 93-205, as amended, until—

(A) the Pacific Salmon Commission has had a reasonable opportunity to implement the provisions of the 1999 Pacific Salmon Treaty Agreement, including the harvest responses pursuant to Paragraph 9, Chapter 3 of Annex IV to the Pacific Salmon Treaty; and

(B) he determines, in consultation with the United States Section of the Pacific Salmon Commission, that implementation actions under the 1999 Agreement will not return escapements as expeditiously as possible to maximum sustainable yield or other biologically-based escapement objectives agreed to by the Pacific Salmon Commission.

(5) The Secretary of Commerce shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives of his intent to initiate or reinstate consultation on Alaska fisheries.

(6)(A) For purposes of this section, "Alaska fisheries" means all directed Pacific salmon fisheries off the coast of Alaska that are subject to the Pacific Salmon Treaty.

(B) For purposes of this section, "Southern United States fisheries" means all directed Pacific salmon fisheries in Washington, Oregon, and the Snake River basin of Idaho that are subject to the Pacific Salmon Treaty.

(c) [Omitted]

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) PACIFIC SALMON TREATY.—

(A) For capitalizing the Northern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of \$75,000,000.

(B) For capitalizing the Southern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of \$65,000,000.

(C) To provide economic adjustment assistance to fishermen pursuant to the 1999 Pacific Salmon Treaty Agreement, there is authorized to be appropriated in fiscal years 2000, 2001, and 2002 a total of \$30,000,000.

(2) PACIFIC COASTAL SALMON RECOVERY.—

(A) For salmon habitat restoration, salmon stock enhancement, sustainable salmon fisheries, and salmon research, including the construction of salmon research and related facilities, there is authorized to be appropriated for each of fiscal years 2000, 2001, 2002, [and] 2003, 2005, 2006, 2007, 2008, [and 2009,] *2009, 2010, 2011, 2012, and 2013*, \$90,000,000 to the States of Alaska, Washington, Oregon, Idaho, Nevada, and California. Amounts appropriated pursuant to this subparagraph shall be made available as direct payments. The State of Alaska may allocate a portion of any funds it receives under this subsection to eligible activities outside Alaska.

(B) For salmon habitat restoration, salmon stock enhancement, salmon research, and supplementation activities, there is authorized to be appropriated in each of fiscal years 2000, 2001, 2002, and 2003, \$10,000,000 to be divided between the Pacific Coastal tribes (as defined by the

Secretary of Commerce) and the Columbia River tribes (as defined by the Secretary of Commerce).

NORTH PACIFIC ANADROMOUS STOCKS ACT OF 1992

**SEC. 810. UNLAWFUL ACTIVITIES.**

[16 U.S.C. 5009]

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 **[purchases]** purposes of conducting any **[search or inspection]** *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 or inspection]** *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.]** *title; or*
- (10) *for any person to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.*

**[SEC. 811. PENALTIES.**

[16 U.S.C. 5010]

**[(a) CIVIL PENALTIES.—**

**[(1)** Any person who is found by the Secretary of Commerce, after notice and opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 810 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$100,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The

amount of such civil penalty shall be assessed by the Secretary of Commerce, or the Secretary's designee, 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 violation, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

【(2) Any person against whom a civil penalty is assessed under paragraph (1) may obtain review thereof in the appropriate court of the United States by filing a complaint in such court within 30 days from the date of such order and by simultaneously serving a copy of such complaint by certified mail on the Secretary of Commerce, the Attorney General, and the appropriate United States Attorney. The Secretary of Commerce shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary of Commerce shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

【(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary of Commerce, the matter shall be referred to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

【(4) a fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 810 shall be liable in rem for any civil penalty assessed for such violation under paragraph (1) and may be proceeded against in any district court of the United States having jurisdiction thereof. Such penalty shall constitute a maritime lien on such vessel that may be recovered in an action in rem in the district court of the United States having jurisdiction over the vessel.

【(5) The Secretary of Commerce may compromise, modify, or remit, with or without conditions, any civil penalty that is subject to imposition or that has been imposed under this section.

【(6) For the purposes of conducting any hearing under this section, 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 contempt or refusal to obey a subpoena served upon any person pursuant to this paragraph, the district court of the United States for any district in which such person is found, resides, or transacts business, upon application by 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.

**[(b) OFFENSES.—**

**[(1)** A person is guilty of an offense if the person commits any act prohibited by section 810 (5), (6), (7), or (8).

**[(2)** Any offense described in paragraph (1) is a class A misdemeanor punishable by a fine under title 18, United States code, or imprisonment for not more than 6 months, or both; except that if in the commission of any offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any enforcement officer, or places and such officer in fear of imminent bodily injury, the offense is a felony punishable by a fine under title 18, United States Code, or imprisonment for not more than 10 years, or both.

**[(c) FORFEITURE.—**

**[(1)** Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish (or a fair market value thereof) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 810 shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

**[(2)** Any district court of the United States shall have jurisdiction, upon application of the Attorney General on behalf of the United States, to order any forfeiture authorized under paragraph (1) and any action provided for under paragraph (4).

**[(3)** if a judgment is entered for the United States in a civil forfeiture proceeding under this section, the Attorney General may seize any property or other interest declared forfeited to the United States, which has not previously been seized pursuant to this title or for which security has not previously been obtained. The provisions of the customs laws relating to—

**[(A)** the seizure, forfeiture, and condemnation of property for violation of the customs law;

**[(B)** the disposition of such property or the proceeds from the sale thereof; and

**[(C)** the remission or mitigation of any such forfeiture; shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title, unless such provisions are inconsistent with the purposes, policy, and provisions of this title.

**[(4)(A)** Any officer authorized to serve any process in rem that is issued by a court having jurisdiction under section 809(b) shall—

**[(i)** stay the execution of such process; or

**[(ii)** discharge any fish seized pursuant to such process; upon receipt of a satisfactory bond or other security from any person claiming such property. Such bond or other security shall be conditioned upon such person delivering such property to the appropriate court upon order thereof, without any impairment of its value, or paying the monetary value of such property pursuant to an order of such court. Judgment shall be recoverable on such bond or other

security against both the principal and any sureties in the event that any condition thereof is breached, as determined by such court.

【(B) Any fish seized pursuant to this title may be sold, subject to the approval and direction of the appropriate court, for not less than the fair market value thereof. The proceeds of any such sale shall be deposited with such court pending the disposition of the matter involved.

【(5) For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel and which is seized in connection with an act prohibited by section 810 were taken or retained in violation of the Convention and this title.】

**SEC. 811. ADMINISTRATION AND ENFORCEMENT.**

*This Act shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

**HIGH SEAS FISHING COMPLIANCE ACT**

**SEC. 104. PERMITTING.**

[16 U.S.C 5503]

(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 management 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-Stevens 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 is void if—*

*(1) 1 or more permits or authorizations required for a vessel to fish, in addition to a permit issued under this section, expire, are revoked, or are suspended; or*

*(2) the vessel is no longer eligible for United States documentation, such documentation is revoked or denied, or the vessel is deleted from such documentation.*

NORTHWEST ATLANTIC FISHERIES CONVENTION ACT OF  
1995

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

[16 U.S.C. 5606]

**SEC. 207. PROHIBITED ACTS 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 or inspection]** *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 or inspection]** *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.]** *section; or*

*(7) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.*

**[(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) ADMINISTRATION AND ENFORCEMENT.—*This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

## WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION IMPLEMENTATION ACT

### SEC. 503. APPOINTMENT OF UNITED STATES COMMISSIONERS.

[16 U.S.C. 6902]

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

(b) ALTERNATE COMMISSIONERS.—The Secretary of State, in consultation with the Secretary, may designate from time to time and for periods of time deemed appropriate Alternate United States Commissioners to the Commission. Any Alternate United States Commissioner may exercise at any meeting of the Commission, Council, any Panel, or the advisory committee established pursuant to subsection (d), all powers and duties of a United States Commissioner in the absence of any Commissioner appointed pursuant to subsection (a) of this section for whatever reason. The number of such Alternate United States Commissioners that may be des-

ignated for any such meeting shall be limited to the number of United States Commissioners appointed pursuant to subsection (a) of this section who will not be present at such meeting.

(c) ADMINISTRATIVE MATTERS.—

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

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

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

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

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

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

(3) *TRAVEL EXPENSES.*—

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

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

(d) *ADVISORY COMMITTEES.*—

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

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

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

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

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

(B) *TERMS AND PRIVILEGES.*—*Each member of the advisory committee appointed under subparagraph (A) shall serve for a term of 2 years and shall be eligible for reappointment. The advisory committee shall be invited to*

attend all non-executive meetings of the United States Commissioners and at such meetings shall be given opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the Commission.

(C) PROCEDURES.—The advisory committee established by subparagraph (A) shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this chapter, the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the WCPFC Convention. The advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures. A majority of the members of the advisory committee shall constitute a quorum. Meetings of the advisory committee, except when in executive session, shall be open to the public, and prior notice of meetings shall be made public in a timely fashion, and the advisory committee shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.).

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

(2) ADMINISTRATIVE MATTERS.—

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

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

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

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

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

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

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

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

(f) MEMORANDUM OF UNDERSTANDING.—For highly migratory species in the Pacific, the Secretary, in coordination with the Secretary of State, shall develop a memorandum of understanding with the Western Pacific, Pacific, and North Pacific Fishery Management Councils, that clarifies the role of the relevant Council or Councils with respect to—

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

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

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

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

#### MAGNUSON-STEVENSON FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT OF 2006

##### SEC. 506. ENFORCEMENT.

[16 U.S.C. 6905]

(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) **ADMINISTRATION AND ENFORCEMENT.**—*This title shall be enforced under section 101 of the International Fisheries Stewardship and Enforcement Act.*

(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 di-

rectly or indirectly disclose the identity or business of any person. Nothing in this subsection shall be interpreted or construed 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.**

[16 U.S.C. 6906]

(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.] title; or

(15) to make or submit any false record, account, or label for, or any false identification of, any fish or fish product (including false identification of the species, harvesting vessel or nation, or the location where harvested) which has been, or is intended to be imported, exported, transported, sold, offered for sale, purchased, or received in interstate or foreign commerce.

(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.

#### PACIFIC WHITING ACT OF 2006

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

[16 U.S.C. 7004]

(a) SCIENTIFIC EXPERTS.—

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

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

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

##### SEC. 609. ADMINISTRATIVE MATTERS.

[16 U.S.C. 7008]

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

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

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

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

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

(b) *COMPENSATION.*—

(1) *IN GENERAL.*—Except as provided in paragraph (2), an individual appointed under this title shall receive no compensation for the individual's service as a representative, alternate representative, scientific expert, or advisory panel member under this title.

(2) *SCIENTIFIC REVIEW GROUP.*—Notwithstanding paragraph (1), the Secretary may employ and fix the compensation of an individual appointed under section 604(a) to serve as a scientific expert on the scientific review group who is not employed by the United States Government, a State government, or an Indian tribal government in accordance with section 3109 of title 5, United States Code.

(c) *TRAVEL EXPENSES.*—Except as provided in subsection (d), the Secretary shall pay the necessary travel expenses of individuals appointed under this title in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(d) *JOINT APPOINTEES.*—With respect to the 2 independent members of the scientific review group and the 2 public advisors to the scientific review group jointly appointed under section 604(c), and the 1 independent member to the joint technical committee jointly appointed under section 605(b), the Secretary may pay up to 50 percent of—

- (1) any compensation paid to such individuals; and
- (2) the necessary travel expenses of such individuals.