Public Law 95-326
95th Congress

An Act

To amend the North Pacific Fisheries Act of 1954.

July 28, 1978
[H.R. 12637]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the North Pacific Fisheries Act of 1954 (16 U.S.C. 1021 et seq.) is amended as follows:

North Pacific Fisheries Act of 1954, amendment. Definitions. 16 USC 1021.

(1) Section 2 is amended—

(A) by amending subsection (a) to read as follows:

"(a) 'Convention' means the International Convention for the High Seas Fisheries of the North Pacific Ocean with a protocol and annex relating thereto signed at Tokyo, May 9, 1952, as amended by the Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo, April 25, 1978."; and

(B) by striking out subsection (e) and inserting in lieu thereof the following:

"(e) 'Fishery conservation zone' means the fishery conservation zone of the United States established by section 101 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

"(f) 'Fishing vessel' means—

"(1) any vessel engaged in catching fish within the Convention area or in processing or transporting fish loaded in the Convention area;

"(2) any vessel outfitted to engage in any activity described in paragraph (1); or

"(3) any vessel in normal support of any vessel described in paragraph (1) or (2).

"(g) 'Permit' means a permit issued by the Secretary of State in cooperation with the Secretary under section 13 of this Act.

Post, p. 404.

"(h) 'Secretary' means the Secretary of Commerce.".

(2)(A) Section 3(a) is amended to read as follows:

16 USC 1022.

"SEC. 3. (a) The United States shall be represented on the Commission by not more than four United States Commissioners to be appointed by the President and serve at his pleasure. Each United States Commissioner shall be appointed for a term of office of not to exceed four years, but is eligible for reappointment. Any United States Commissioner may be appointed for a term of less than four years if such appointment is necessary to insure that the terms of office of not more than one Commissioner will expire in any one year. Of the Commissioners, who shall receive no compensation for their services as Commissioners—

"(1) one shall be an official of the United States Government;

"(2) two shall be residents of the State of Alaska; and

"(3) one shall be a resident of the State of Washington.

An individual is not eligible for appointment under paragraph (2) or (3) as a Commissioner unless the individual is knowledgeable or experienced concerning the fisheries covered by the Convention.".

(B) The amendment made by paragraph (A) shall take effect on the sixtieth day after the date of the enactment of this Act.

Effective date. 16 USC 1022 note.

AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

16 USC 1023.

(3) Section 4 is amended—

(A) by amending subsection (a) to read as follows:

"SEC. 4. (a) The United States Section shall appoint an advisory committee of not less than six and not more than twenty-one members and shall fix the terms of office thereof. The members shall be appointed from among—

"(1) individuals who are knowledgeable or experienced with respect to the fisheries covered by the Convention; and

"(2) officers and employees of the fishery agencies of States the residents of which maintain a substantial fishery in the Convention area;

except that two-thirds of the membership of the committee shall consist of individuals, appointed under paragraphs (1) and (2), who are residents of Alaska."; and

(B) by amending the second sentence of subsection (d) to read as follows:

"On approval by the United States Section, not more than five members of the committee, designated by the committee, shall be paid for transportation expenses and per diem incident to attendance at meetings of the Commission or the United States Section; except that in the case in which—

"(1) one member is so designated, such member shall be from among the members representing Alaska;

"(2) two or three members are so designated, two members shall be from among those representing Alaska; and

"(3) four or five members are so designated, three members shall be from among those representing Alaska.".

16 USC 1025.

(4) Section 6 is amended to read as follows:

"SEC. 6. The Secretary of State, with the concurrence of the Secretary, may accept or reject, on behalf of the United States, recommendations made by the Commission in accordance with article III, section 1 of the Convention.".

16 USC 1025a.

(5) Section 7 is amended to read as follows:

"SEC. 7. (a) The Secretary shall administer and, except to the extent otherwise provided for in this Act, enforce the provisions of the Convention, this Act, and regulations issued under this Act.

Regulations.

"(b) In carrying out such functions, the Secretary—

"(1) shall, in consultation with the Secretary of the department in which the Coast Guard is operating and the United States Section, adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and this Act; and

"(2) may, with the concurrence of the Secretary of State, cooperate with the duly authorized officials of the government of any party to the Convention.

"(c) The Secretary may adopt regulations which apply only to stocks of fish in the Convention area north of the parallel of north latitude of 48 degrees and 30 minutes, but such regulations shall not apply in the Convention area south of the 49th parallel of north latitude with respect to sockeye salmon (Oncorhynchus nerka) or pink salmon (Oncorhynchus gorbuscha).".

Enforcement.
16 USC 1027.

(6) Section 9 is amended to read as follows:

"SEC. 9. (a) 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 utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all

elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency which has entered into an agreement with either such Secretary under the preceding sentence may (if the agreement so provides), authorize officers (hereinafter in this Act referred to as 'enforcement officers') to enforce the provisions of the Convention, this Act, and regulations adopted and permits issued under this Act: *Provided*, That any such agreement or contract entered into pursuant to this section shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts.

"(b) Enforcement officers may, within the fishery conservation zone—

"(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 10;

Post, p. 402.

"(B) board, and search or inspect, any fishing vessel which is subject to the provisions of the Convention and this Act;

"(C) 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, the violation of any provision of the Convention, this Act, or any regulation adopted or permit issued under this Act;

"(D) seize any fish (wherever found) taken or retained in violation of any provision referred to in subparagraph (C); and

"(E) seize any other evidence related to any violation of any provision referred to in subparagraph (C);

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

"(3) exercise any other lawful authority.

"(c) The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions this Act.

Jurisdiction.

"(d)(1) Enforcement officers may in the Convention area outside the fishery conservation zone and similar zones of Canada and Japan—

"(A) board any fishing vessel of Canada or Japan fishing for or processing anadramous species and, without warrant or process, inspect equipment, logs, documents, catch, and other articles, and question persons, on board the vessel for the purpose of carrying out the provisions of the Convention, this Act, or any regulation adopted or permit issued under this Act; and

"(B) if any such vessel or person on board is actually engaged in operations in violation of any such provision, or there is reasonable ground to believe any person or vessel was obviously so engaged before the boarding of such vessel by the enforcement officer, detain such vessel or person and further investigate the circumstances if necessary.

If an enforcement officer, after boarding and investigation, has reasonable cause to believe that any such fishing vessel or person engaged in operations in violation of any provision referred to in subparagraph (A), the officer shall further detain the vessel or person and deliver the vessel or person as promptly as practicable to the authorized officials of the appropriate nation.

"(2) When requested by the appropriate authorities of Canada or Japan, as the case may be, an enforcement officer 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 or Japan of any violation of the provisions of the Convention or any Canadian or Japanese law relating to the enforcement thereof.

Unlawful activities. 16 USC 1029.

(7) Section 10 is amended to read as follows:

"SEC. 10. It is unlawful for any person subject to the jurisdiction of the United States—

"(1) to violate any provision of the Convention, this Act, or any regulation adopted or permit issued under this Act;

"(2) 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 in connection with the enforcement of the Convention, this Act, or any regulation or permit referred to in paragraph (1);

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

"(4) to resist a lawful arrest or detention 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 the Convention or this Act or any regulation adopted or permit issued under this Act;

"(6) 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.".

Penalties. 16 USC 1030. Notice. Hearing. *Supra.*

(8) Section 11 is amended to read as follows:

"SEC. 11. (a)(1) 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 10 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed $25,000 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 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.

Review.

"(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 notice of appeal in such court within thirty days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary 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 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, 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. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

"(4) 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.

"(b)(1) A person is guilty of an offense if he commits any act prohibited by section 10 (1), (3), (4), or (5).

Ante, p. 402.

"(2) Any offense described in subsection paragraph (1) is punishable by a fine of not more than $50,000, or imprisonment for not more than six 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 $100,000, or imprisonment for not more than ten years, or both.

Penalty.

"(c)(1) 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 10 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 by 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).

Jurisdiction.

"(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 Act or for which security has not previously been obtained under subsection (d). The provisions of the customs laws relating to—

"(A) the disposition of forfeited property;

"(B) the proceeds from the sale of forfeited property;

"(C) the remission or mitigation of forfeitures; and

"(D) 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 repect to this Act, be performed by officers or other persons designated for such purpose by the Secretary of Commerce.

"(4)(A) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 9(c) shall—

Ante, p. 400.

"(i) stay the execution of such process; or

"(ii) 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 (I) delivering such property to the

appropriate court upon order thereof, without any impairment of its value, or (II) 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 Act 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 10 were taken or retained in violation of the Convention and this Act.".

Ante, p. 402.

Repeal.
16 USC 1031.
16 USC 1032.

(9) Section 12 is repealed and section 13 is redesignated as section 12.

(10) Section 12 (as redesignated by paragraph (7)) is amended by striking out subsection (b) and inserting in lieu thereof the following:

Funds, availability.

"(b) Such funds as shall be made available to the Secretary for research and related activities shall be expended to carry out the program of the Commission in accordance with the recommendations of the United States Section and to carry out other research and observer programs established pursuant to the Convention.

Appropriation authorization.
Infra.

"(c) There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of section 14, such sums not to exceed $1,000,000 for fiscal year 1979 and for each of the next two fiscal years.

Appropriation authorization.

"(d) There are authorized to be appropriated to the Secretary, for purposes of carrying out a sonar censusing project in the Arctic-Yukon-Kuskokwim region of Alaska, not to exceed $500,000 during the period beginning October 1, 1978, and ending September 30, 1981.".

16 USC 1021 note.

(11) Section 14 is redesignated as section 16.

(12) The following new sections are inserted immediately after section 12 (as redesignated in paragraph (7)):

16 USC 1033.

"SEC. 13. (a) Each Canadian or Japanese fishing vessel which is authorized to fish in the fishery conservation zone pursuant to the Convention shall have on board a registration permit issued under subsection (b).

Registration permit.

"(b) The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each Canadian or Japanese fishing vessel which is authorized to fish within the fishery conservation zone pursuant to the Convention. Each such permit shall set forth the terms and conditions contained in the Convention that apply with respect to such operations, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall comply with any regulations adopted under section 14(a) of this Act and shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any enforcement officer. The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the pay-

Post, p. 405.

Fees.

ment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

"(c) Notwithstanding any other provision of law, Canadian and Japanese fishing vessels authorized to fish for anadromous species outside the fishery conservation zone pursuant to the Convention shall not be required to obtain any permit relating to such species.

"SEC. 14. (a) The Secretary shall take such actions as are necessary and appropriate to assure the full implementation of the provisions of the Convention under which the United States and the Government of Japan have agreed— 16 USC 1034.

"(1) to carry out a marine mammal research program;

"(2) to determine the effect of the salmon fishery on marine mammal populations; and

"(3) to work to reduce or eliminate the taking of marine mammals incidental to fishing operations.

during the research period ending on June 9, 1981. Such actions shall include, but not be limited to, (A) the placement of observers aboard Japanese fishing vessels for purposes of making scientific observations and studies with respect to the incidental taking of marine mammals, and (B) the adoption of regulations, which conform to the provisions of the convention, governing the incidental taking of marine mammals by Japanese fishing vessels within the fishery conservation zone, including, but not limited to, regulations which require the collection of biological material and data on all marine mammals incidentally taken within such zone and the use of such gear and fishing techniques as are determined to be feasible to reduce or eliminate such incidental taking. Regulations.

"(b) During the research period ending on June 9, 1981, the taking of marine mammals incidental to fishing operations by Japanese vessels within the fishery conservation zone shall be regulated in accordance with paragraph 1(c) of the annex to the Convention; except that if the Secretary finds—

"(1) on the basis of the marine mammal research program referred to in subsection (a)(1), that the population of Dall porpoise or of any other marine mammal affected by such incidental taking is below optimum sustainable population and is not trending upward toward such level or is in danger of depletion; or

"(2) that the contemplated research efforts cannot be successfully implemented or that necessary and desirable potential reductions or elimination of incidental taking of marine mammals, although feasible, are not being realized,

the Secretary, acting through the Secretary of State, shall immediately initiate negotiations with the Government of Japan to modify the Convention or recommend such other action as is necessary to limit or eliminate the incidental taking of marine mammals to the extent feasible and, in any event, to the extent required to assure that such populations attain and remain at their optimum sustainable population levels.

"(c) After June 9, 1981, the taking of marine mammals incidental to fishing operations by Japanese vessels within the fishing conservation zone shall be regulated pursuant to the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.). Regulations.

Report to Congress.

"(d) The Secretary shall submit to Congress a report, prepared in consultation with the Secretary of State, on May 1 of 1979, 1980, and 1981 which shall set forth the activities undertaken by the United States and Japan to implement the objectives referred to in subsection (a) (1), (2), and (3) and the results of such activities. The report shall detail the steps taken by both nations to implement the Convention, the results of all research and statistical reporting and analysis carried out pursuant to the Convention and a description of all enforcement activities and their disposition. The report shall include an analysis of salmon harvesting and research, estimates of the magnitude of incidental taking of Dall porpoises (Phocoenoides dalli) by Japanese fishing vessels, estimates, as possible, of the abundance, distribution, recruitment rates, status, trends, and impacts of incidental taking upon the optimum sustainable populations of Dall porpoises, and any proposals for adoption of fishing gear or techniques designed to reduce or eliminate such incidental taking. If available information is inadequate to provide the basis for such estimates or proposals, the report shall include an indication of what research efforts are needed to provide the requisite information.

16 USC 1035.

"SEC. 15. The Secretary, the Secretary of State, and the Secretary of the department in which the Coast Guard is operating may administer this Act consistent with the terms of the Convention on a provisional basis pending the exchange by all the contracting parties of instruments of ratification or approval of the Protocol Amending the International Convention for the High Seas Fisheries of the North Pacific Ocean, signed at Tokyo on April 25, 1978, in accordance with article II thereof.".

Effective dates. 16 USC 1021 note.

SEC. 2. This Act, including the amendments made by this Act, shall take effect on the date of enactment of this Act, except the amendments made by paragraph (10) of the first section of this Act shall take effect on October 1, 1978.

Approved July 28, 1978.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 95-1194 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 95-924 accompanying S. 3082 (Comm. on Commerce, Science and Transportation).
CONGRESSIONAL RECORD, Vol. 124 (1978):
June 6, considered and passed House.
June 14, considered and passed Senate, amended.
June 28, House concurred in certain Senate amendments; in others with amendments.
July 13, Senate concurred in House amendments.