Public Law 97-389
97th Congress

An Act

To amend the Commercial Fisheries Research and Development Act of 1964.

Dec. 29, 1982
[H.R. 3942]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fisheries Amendments of 1982".

Fisheries Amendments of 1982.
16 USC 779 note.

TITLE I—COMMERCIAL FISHERIES RESEARCH AND DEVELOPMENT ACT

SEC. 101. (a) Section 4(a) of the Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779b(a)) is amended—

(1) by striking the period at the end of paragraph (2) and inserting in lieu thereof ", and"; and

(2) by adding at the end thereof the following new paragraph:

"(3) $5,000,000 for each of the fiscal years ending September 30, 1984, and September 30, 1985.".

(b) Section 4(b) of the Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779b(b)) is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by inserting ", and" at the end of paragraph (3); and

(3) by adding at the end thereof the following new paragraph:

"(4) $2,500,000 for each of the fiscal years ending September 30, 1984, and September 30, 1985.".

(c) Section 4(c) of the Commercial Fisheries Research and Development Act of 1964 (16 U.S.C. 779b(c)) is repealed.

TITLE II—MARINE MAMMAL PROTECTION

SEC. 201. Section 14 of the North Pacific Fisheries Act of 1954 (16 U.S.C. 1034) is amended to read as follows:

"SEC. 14. (a)(1) The Secretary of Commerce is directed to take such actions as are necessary and appropriate to determine the effect of the Japanese salmon drift gillnet fishery on marine mammal populations, and to reduce or eliminate the incidental taking of marine mammals, particularly Dall's porpoise, by this fishery. Such actions shall include, but not be limited to—

"(A) the placement of duly authorized observers of the United States onboard Japanese salmon fishing and research vessels while within the Fishery Conservation Zone, for the purpose of making scientific observations and studies relating to the biology of the Dall's porpoise and the incidental taking of marine mammals, seabirds, and king salmon of North American origin;

"(B) the collection of a representative sample of biological material and data on all marine mammals incidentally taken in the fishery; and

"(C) the adoption of requirements, by permit conditions or agreement, governing the incidental taking of marine mammals by Japanese salmon fishing vessels within the Fishery Conservation Zone, which will insure that new fishing gear or tech-

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niques, or both, are implemented in the North Pacific salmon fishery which will reduce porpoise mortality to the greatest extent practicable.

"(2) The introduction of new fishing gear or techniques, or both, in the fishery under paragraph (1) of this subsection shall be accomplished no later than is specified in the following timetable:

"(A) 25 per centum of the fleet by the commencement of the 1984 season;

"(B) 50 per centum of the fleet by the commencement of the 1985 season;

"(C) 75 per centum of the fleet by the commencement of the 1986 season; and

"(D) 100 per centum of the fleet in order to be eligible for a new permit for the period after June 9, 1987.

The Secretary shall have the authority to decide, based upon available fishery research, which types of fishing gear or techniques offer the most practical and effective opportunity for reducing porpoise mortality, and to specify which of these fishing gear or techniques, or both, must be implemented during the time periods specified in subparagraphs (A) through (D) of this paragraph. In addition, the National Marine Fisheries Service may require the implementation of new gear types or fishing techniques, or both, on a faster schedule if the Service determines that faster implementation is technically and economically feasible.

General Permit, extension.

"(b) The General Permit issued under the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) to the Federation of Japan Salmon Fisheries Cooperative Association on May 7, 1981 (hereinafter referred to as the 'General Permit'), is extended through June 9, 1987, unless earlier terminated by the Secretary pursuant to applicable law: *Provided*, That—

"(1) all other provisions of the General Permit and applicable law shall remain in effect during that period;

Report, availability. Publication in Federal Register.

"(2) the Secretary shall by January 1 of each year during that period prepare and make available a report covering the results of the annual review required by condition B-2 of the General Permit and a proposed action plan for the forthcoming fishing season setting forth monitoring, research and development, and any other necessary actions to assure compliance with the General Permit, resolve questions about the status and trends of marine mammals affected by the Japanese high seas and land-based salmon gillnet fisheries, and reduce the annual incidental take of marine mammals in the Fishery Conservation Zone, and shall publish a notice of availability of the report in the Federal Register. The Secretary shall, by April 30 of each year during this period, prepare and make available a report covering a final action plan and shall publish a notice of availability of the report in the Federal Register.

"(3) the Memorandum of Understanding between the Government of the United States of America and the Government of Japan dated June 3, 1981, relating to such incidental taking shall be modified or renegotiated by June 9, 1984, so as to apply to this extended period and to ensure the conduct of necessary monitoring and research and development efforts to implement the action plans described in paragraph (2) of this subsection.

Publication in Federal Register.

"(c) The taking of marine mammals incidental to fishing operations by Japanese salmon fishing vessels within the Fishery Conservation Zone shall be regulated in accordance with the General

Permit, except that the Secretary shall take appropriate steps, including the suspension or modification of the General Permit, if the Secretary determines that the General Permit holder or certificate holders are not adhering to the conditions of the General Permit or to the conditions specified in paragraphs (a)(1)(C) and (a)(2) of this section and publishes such determination and its basis in the Federal Register.

"(d) The terms and conditions under which the General Permit is issued may be modified by the Secretary in such manner as the Secretary determines to be consistent with and necessary to carry out the purposes of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 et seq.) and this Act.

"(e) The Secretary shall ensure that any Memorandum of Understanding between the Government of Japan and the Government of the United States of America shall require no less of a commitment to marine mammal research and seabird research than that required by this section and the Memorandum of Understanding in effect on the date of enactment of the Fisheries Amendments Act of 1982.

Ante, p. 1949.

"(f)(1) In order to assure full implementation of the provisions of this section, the Secretary shall include as a condition of such General Permit and any Memorandum of Understanding that the Government of Japan or the permit holder, shall provide—

Research program funding.

"(A) appropriate funding each year to carry out fully a joint research program on Dall's porpoise and other marine mammals incidentally taken in the Japanese fishery; and

Report.

"(B) a full report each year on the activities undertaken by the Government of Japan and the General Permit holder relating to marine mammal research and the progress toward the elimination of the incidental taking of marine mammals in the fishery.

Permit suspension.

"(2) If the Secretary finds that such research cannot be successfully conducted because of a lack of adequate funding by the Government of Japan or the General Permit holder the Secretary shall immediately suspend the General Permit until such time as adequate funding is provided.".

Effective date.

SEC. 202. The first sentence of section 201(b)(1) of the Act of October 21, 1972 (16 U.S.C. 1401(b)(1)), is amended to read as follows: "Effective September 1, 1982, the Commission shall be composed of three members who shall be appointed by the President, by and with the advice and consent of the Senate.".

TITLE III—NORTH ATLANTIC SALMON TREATY

Atlantic Salmon Convention Act of 1982. 16 USC 3601 note.

SEC. 301. This title may be cited as the "Atlantic Salmon Convention Act of 1982".

Definitions. 16 USC 3601.

SEC. 302. As used in this title, the term—

(1) "Act of 1976" means the Act entitled "An Act to provide for the conservation and management of the fisheries, and for other purposes", approved April 13, 1976 (16 U.S.C. 1801 et seq.);

(2) "Commission" means any of the Commissions of the Organization that are established by the Convention;

(3) "Commissioner" means a United States Commissioner appointed under section 403 of this title;

(4) "Convention" means the Convention for the Conservation of Salmon in the North Atlantic Ocean, signed at Reykjavik, Iceland, on March 2, 1982;

(5) "Council" means the Council established by the Convention;

(6) "fishing" has the same meaning as such term has in section 3(10) of the Act of 1976 (16 U.S.C. 1802(10));

(7) "Organization" means the North Atlantic Salmon Conservation Organization established under the Convention;

(8) "person" has the same meaning as such term has in section 3(19) of the Act of 1976 (16 U.S.C. 1802(19)); and

(9) "salmon" means all species of salmon which migrate in or into the waters of the Atlantic Ocean north of 36 degrees north latitude.

Council and Commissions, membership. 16 USC 3602.

SEC. 303. (a) The United States shall be represented on the Council and Commissions by three United States Commissioners to be appointed by the President to serve at his pleasure. Of such Commissioners, one shall be an official of the United States Government, and two shall be individuals (not officials of the United States Government) who are knowledgeable or experienced concerning the conservation and management of salmon of United States origin.

(b) The Secretary of State, in consultation with the Secretary of Commerce and the Secretary of the Interior, may designate alternate United States Commissioners. In the absence of a Commissioner appointed under subsection (a) of this section, an alternate Commissioner may exercise at any meeting of the Organization, the Council, or any Commission all functions of such Commissioner.

Compensation.

(c) Individuals who serve as Commissioners and alternate Commissioners shall not receive any compensation for such service. Such individuals shall 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.

5 USC 8101 *et seq.*, 28 USC 2671 *et seq.*

(d) In carrying out their functions under the Convention, the Commissioners may consult with the appropriate Regional Fishery Management Councils established by section 302 of the Act of 1976 (16 U.S.C. 1852), and may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply to consultations described in this subsection.

5 USC app.

16 USC 3603.

SEC. 304. (a) The Secretary of State may—

(1) receive, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of the Organization and its subsidiary organs;

(2) with the concurrence of the Secretary of Commerce and the Secretary of the Interior, approve, object to, or withdraw objections to regulatory measures proposed in accordance with the Convention; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed regulatory measure.

(b) If the concurrence required under subsection (a)(2) of this section has not been obtained by the Secretary of State—

(1) regarding the approval of, or the objection to, a proposed regulatory measure within forty-five days after the measure was received on behalf of the United States; or

(2) regarding the withdrawal of an objection of the United States to a proposed regulatory measure within forty-five days after such withdrawal is proposed by the Secretary of State;

the Secretary of State shall submit the matter in disagreement, together with a statement of the opposing positions, to the President for timely disposition.

Regulations. 16 USC 3604.

SEC. 305. (a) The Secretary of Commerce, in cooperation with the Secretary of the Interior and the Secretary of the department in which the Coast Guard is operating, shall promulgate such regulations pursuant to section 553 of title 5, United States Code, as may be necessary to carry out the purposes and objectives of the Convention and this title, and to implement regulatory measures that are binding on the United States under the Convention. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located.

(b) The Secretary of Commerce, in cooperation with the Secretary of the Interior, shall prepare all statements, reports, and notifications required by Articles 14 and 15 of the Convention and submit such documents to the Secretary of State for transmission to the Organization.

16 USC 3605.

SEC. 306. (a) In carrying out the provisions of the Convention, the Secretary of Commerce, in consultation with the Secretary of the Interior, may arrange for the cooperation of agencies of the United States and the States, and of private institutions and organizations.

(b) Appropriate agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Organization in carrying out its duties under the Convention. Such agencies may accept reimbursement from the Organization for providing such services, facilities, and personnel.

16 USC 3606.

SEC. 307. (a) It is unlawful for any person, or any vessel, subject to the jurisdiction of the United States—

(1) to conduct directed fishing for salmon in waters seaward of twelve miles from the baselines from which the breadths of territorial seas are measured, in waters of the Atlantic Ocean north of 36 degrees north latitude; or

(2) to violate any provision of the Convention or this title, or of any regulation promulgated under this title.

(b) Any person who commits any act that is unlawful under subsection (a) of this section shall—

(1) be liable to the United States for a civil penalty under section 308 of the Act of 1976 (16 U.S.C. 1858) to the same extent as if such act were an act prohibited under section 307 of the Act of 1976 (16 U.S.C. 1857); and

(2) be guilty of an offense under section 309 of the Act of 1976 (16 U.S.C. 1859) to the same extent as if such act were an act prohibited by section 307(1) (D), (E), (F), or (H) of the Act of 1976 (16 U.S.C. 1857(1) (D), (E), (F), or (H)).

(c) Any vessel used in the commission of an act which is unlawful under subsection (a) of this section shall be subject to civil forfeiture under section 310 of the Act of 1976 (16 U.S.C. 1860) to the same extent as if such vessel was used in the commission of an act prohibited by section 307 of the Act of 1976 (16 U.S.C. 1857).

16 USC 3607.

SEC. 308. The Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating shall enforce the provisions of this title and any regulation issued under this title. For purposes of such enforcement, such provisions and regulations shall be considered to be provisions of the Act of 1976 to which section 311

(a), (b), (c), and (d) of the Act of 1976 (16 U.S.C. 1861 (a), (b), (c), and (d), respectively) apply.

Appropriation authorization. 16 USC 3608.

SEC. 309. There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Convention and this title, including—

(1) necessary travel expenses of the Commissioners and alternate Commissioners in accordance with the Federal Travel Regulation and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code; and

(2) the United States contribution to the Organization as provided in Article 16 of the Convention, not to exceed $50,000 for fiscal year 1983, and not to exceed, for each succeeding fiscal year, the amount assessed by the Organization for the United States for such year.

TITLE IV—GOVERNING INTERNATIONAL FISHERY AGREEMENTS

Effective date. 16 USC 1823 note.

SEC. 401. Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Japan pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.) signed at Washington on September 10, 1982, is approved, and shall become effective on January 1, 1983.

16 USC 1823 note.

SEC. 402. Notwithstanding any other provision of law, the governing international fishery agreement entered into between the Government of the United States and the Government of Spain pursuant to the Magnuson Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.) signed on July 29, 1982, is approved.

TITLE V—MISCELLANEOUS PROVISIONS

46 USC 65i, 65j.

SEC. 501. Notwithstanding the failure of the vessels named below to meet the requirements contained in sections 111 and 112 of the Vessel Documentation Act, as amended (46 U.S.C. 65 (i) and (j)), and section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883), on the date of this Act, the Secretary of the department in which the Coast Guard is operating shall cause the vessel Centurion (officially numbered 236815), owned by Joseph B. Simoncelli, of Scranton, Pennsylvania, and the vessel Ellen Ruth (officially numbered 282354) owned by Jefferson B. Bruton, of Isle of Palms, South Carolina, to be documented as vessels of the United States upon compliance with all other requirements of law, with the privilege of engaging in the coastwise trade.

46 USC 883.

SEC. 502. The Merchant Marine Act, 1920 (41 Stat. 988), as amended (46 U.S.C. 861 et seq.), is amended by adding at the end of section 27: "For the purposes of this section, after December 31, 1983, or after such time as an appropriate vessel has been constructed and documented as a vessel of the United States, the transportation of hazardous waste, as defined in section 1004(5) of the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903(5)), from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States: *Provided, however,* That the provisions of this sentence shall not

apply to this transportation when performed by a foreign-flag ocean incineration vessel, owned by or under construction on May 1, 1982, for a corporation wholly owned by a citizen of the United States; the term 'citizen of the United States', as used in this proviso, means a corporation as defined in sections 2(a) and 2(b) of the Shipping Act, 1916 (46 U.S.C. 802 (a) and (b)). The incineration equipment on these vessels shall meet all current United States Coast Guard and Environmental Protection Agency standards. These vessels shall, in addition to any other inspections by the flag state, be inspected by the United States Coast Guard, including drydock inspections and internal examinations of tanks and void spaces, as would be required of a vessel of the United States. Satisfactory inspection shall be certified in writing by the Secretary of Transportation. Such inspections may occur concurrently with any inspections required by the flag state or subsequent to but no more than one year after the initial issuance or the next scheduled issuance of the Safety of Life at Sea Safety Construction Certificate. In making such inspections, the Coast Guard shall refer to the conditions established by the initial flag state certification as the basis for evaluating the current condition of the hull and superstructure. The Coast Guard shall allow the substitution of an equivalent fitting, material, appliance, apparatus, or equipment other than that required for vessels of the United States if the Coast Guard has been satisfied that fitting, material, appliance, apparatus, or equipment is at least as effective as that required for vessels of the United States.".

"Citizen of the United States."

Vessel inspections.

SEC. 503. (a) Section 20 of the Act of March 4, 1915 (38 Stat. 1185), as amended (46 U.S.C 688) is amended—

(1) by redesignating that section as section 20(a); and

(2) by adding at the end thereof the following new subsection:

"(b)(1) No action may be maintained under subsection (a) or under any other maritime law of the United States for maintenance and cure or for damages for the injury or death of a person who was not a citizen or permanent resident alien of the United States at the time of the incident giving rise to the action, if the incident occurred—

"(A) while that person was in the employ of an enterprise engaged in the exploration, development, or production of offshore mineral or energy resources—including but not limited to drilling, mapping, surveying, diving, pipelaying, maintaining, repairing, constructing, or transporting supplies, equipment or personnel, but not including transporting those resources by a vessel constructed or adapted primarily to carry oil in bulk in the cargo spaces; and

"(B) in the territorial waters or waters overlaying the continental shelf of a nation other than the United States, its territories, or possessions. As used in this paragraph, the term 'continental shelf' has the meaning stated in Article I of the 1958 Convention on the Continental Shelf.

"Continental shelf."

15 UST 471.

"(2) The provisions of paragraph (1) of this subsection shall not be applicable if the person bringing the action establishes that no remedy was available to that person—

"(A) under the laws of the nation asserting jurisdiction over the area in which the incident occurred; or

"(B) under the laws of the nation in which, at the time of the incident, the person for whose injury or death a remedy is sought maintained citizenship or residency.".

Restriction.
46 USC 688 note.

(b) The amendment made by this section does not apply to any action arising out of an incident that occurred before the date of enactment of this section.

SEC. 504. Section 27 of the Merchant Marine Act, 1920 (46 U.S.C. 883) is amended by inserting the following immediately before the period at the end thereof: "*Provided further*, That for the purposes of this section, supplies aboard United States documented fish processing vessels, which are necessary and used for the processing or assembling of fishery products aboard such vessels, shall be considered ship's equipment and not merchandise".

Approved December 29, 1982.

LEGISLATIVE HISTORY—H.R. 3942:

HOUSE REPORT No. 97-295 (Comm. on Merchant Marine and Fisheries).
CONGRESSIONAL RECORD:
Vol. 127 (1981): Nov. 4, considered and passed House.
Vol. 128 (1982): Dec. 10, considered and passed Senate, amended; House concurred in Senate amendments.