NOTICE OF OFFICE OF MANAGEMENT AND BUDGET ACTION

Date 01/21/2010

Department of Commerce
National Oceanic and Atmospheric Administration
FOR CERTIFYING OFFICIAL: Suzanne Hilding
FOR CLEARANCE OFFICER: Diana Hynek

In accordance with the Paperwork Reduction Act, OMB has taken action on your request received 01/21/2010

ACTION REQUESTED: Revision of a currently approved collection
TYPE OF REVIEW REQUESTED: Regular
ICR REFERENCE NUMBER: 201001-0648-009
AGENCY ICR TRACKING NUMBER:
TITLE: Vessel Monitoring System Requirements under the Western and Central Pacific Fisheries Convention
LIST OF INFORMATION COLLECTIONS: See next page

OMB ACTION: Approved without change
OMB CONTROL NUMBER: 0648-0596
The agency is required to display the OMB Control Number and inform respondents of its legal significance in accordance with 5 CFR 1320.5(b).

EXPIRATION DATE: 11/30/2012 DISCONTINUE DATE:

BURDEN:	RESPONSES	HOURS	COSTS
Previous	0	0	0
New	527	191	58,111
Difference			
Change due to New Statute	0	0	0
Change due to Agency Discretion	527	191	58,111
Change due to Agency Adjustment	0	0	0
Change Due to Potential Violation of the PRA	0	0	0

TERMS OF CLEARANCE:

OMB Authorizing Official: Kevin F. Neyland
Deputy Administrator,
Office Of Information And Regulatory Affairs

List of ICs			
IC Title	Form No.	Form Name	CFR Citation
VMS activation reports			50 CFR 300.45
VMS on/off reports			50 CFR 300.45
VMS purchase and installation			50 CFR 300.45
VMS maintenance plus position reporting costs			50 CFR 300.45

PAPERWORK REDUCTION ACT SUBMISSION

Please read the instructions before completing this form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.

1. Agency/Subagency originating request
DOC/NOAA/NMFS/PIRO

2. OMB control number b. [✓] None
a. 0648 -

3. Type of information collection (*check one*)
a. [✓] New Collection
b. [ ] Revision of a currently approved collection
c. [ ] Extension of a currently approved collection
d. [ ] Reinstatement, without change, of a previously approved collection for which approval has expired
e. [ ] Reinstatement, with change, of a previously approved collection for which approval has expired
f. [ ] Existing collection in use without an OMB control number
For b-f, note Item A2 of Supporting Statement instructions

4. Type of review requested (*check one*)
a. [✔] Regular submission
b. [ ] Emergency - Approval requested by ____/____/____
c. [ ] Delegated

5. Small entities
Will this information collection have a significant economic impact on a substantial number of small entities? [ ] Yes [✔] No

6. Requested expiration date
a. [✓] Three years from approval date b. [✓] Other Specify:____/____

7. Title Vessel Monitoring System Requirements under the WCPFC

8. Agency form number(s) (*if applicable*) NA

9. Keywords

10. Abstract

U.S. vessels fishing on the high seas in the Western and Central Pacific Fisheries (WCPF) Convention Area would operate position locating devices as part of the vessel monitoring systems of NOAA and the WCPF Commission. The vessel position reports would be used by NOAA and the Commission to help ensure compliance with domestic laws and the Commission's conservation and management measures, and are needed in order for the U.S. to comply with its obligations under the WCPF Convention.

11. Affected public (*Mark primary with "P" and all others that apply with "x"*)
a. x Individuals or households d. ___ Farms
b. P Business or other for-profit e. ___ Federal Government
c. ___ Not-for-profit institutions f. ___ State, Local or Tribal Government

12. Obligation to respond (*check one*)
a. [ ] Voluntary
b. [ ] Required to obtain or retain benefits
c. [✓] Mandatory

13. Annual recordkeeping and reporting burden
a. Number of respondents 78
b. Total annual responses 527
1. Percentage of these responses collected electronically 100 %
c. Total annual hours requested 192
d. Current OMB inventory 0
e. Difference 192
f. Explanation of difference
1. Program change 192
2. Adjustment

14. Annual reporting and recordkeeping cost burden (*in thousands of dollars*)
a. Total annualized capital/startup costs 0
b. Total annual costs (O&M) 136
c. Total annualized cost requested 136
d. Current OMB inventory 0
e. Difference 136
f. Explanation of difference
1. Program change 136
2. Adjustment

15. Purpose of information collection (*Mark primary with "P" and all others that apply with "X"*)
a. ___ Application for benefits e. x Program planning or management
b. x Program evaluation f. x Research
c. ___ General purpose statistics g. P Regulatory or compliance
d. ___ Audit

16. Frequency of recordkeeping or reporting (*check all that apply*)
a. [ ] Recordkeeping b. [ ] Third party disclosure
c. [ ] Reporting
1. [ ] On occasion 2. [ ] Weekly 3. [ ] Monthly
4. [ ] Quarterly 5. [ ] Semi-annually 6. [✔] Annually
7. [ ] Biennially 8. [✔] Other (describe) Hourly and on occasion

17. Statistical methods
Does this information collection employ statistical methods
[ ] Yes [✔] No

18. Agency Contact (person who can best answer questions regarding the content of this submission)
Name: Thomas R. Graham
Phone: 808-944-2219

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9

NOTE: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers:

(a) It is necessary for the proper performance of agency functions;

(b) It avoids unnecessary duplication;

(c) It reduces burden on small entities;

(d) It used plain, coherent, and unambiguous terminology that is understandable to respondents;

(e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;

(f) It indicates the retention period for recordkeeping requirements;

(g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):

- (i) Why the information is being collected;
- (ii) Use of information;
- (iii) Burden estimate;
- (iv) Nature of response (voluntary, required for a benefit, mandatory);
- (v) Nature and extent of confidentiality; and
- (vi) Need to display currently valid OMB control number;

(h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of instructions);

(i) It uses effective and efficient statistical survey methodology; and

(j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of the provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee	Date

Agency Certification (signature of Assistant Administrator, Deputy Assistant Administrator, Line Office Chief Information Officer, head of MB staff for L.O.s, or of the Director of a Program or StaffOffice)	
Signature signed by Emily Menashes	Date 07/22/2008
Signature of NOAA Clearance Officer	
Signature signed by Sarah Brabson	Date 7/24/2008

SUPPORTING STATEMENT
VESSEL MONITORING SYSTEM REQUIREMENTS UNDER THE WESTERN AND CENTRAL PACIFIC FISHERIES
OMB CONTROL NO.: 0648-XXXX

A. Justification

1. Explain the circumstances that make the collection of information necessary.

The Western and Central Pacific Fisheries Convention Implementation Act (WCPFCIA), Title V of the Magnuson-Stevens Fishery Conservation and Management Act Reauthorization Act, gives the Secretary of Commerce the authority to enact regulations to fulfill the Western and Central Pacific Fisheries Convention (WCPFC) requirement that all member States require their vessels that fish for highly migratory fish stocks (HMS) on the high seas in the Convention Area carry and use near real-time satellite-based position-fixing transmitters ("VMS units") as part of a vessel monitoring system (VMS) operated by the Western and Central Pacific Fisheries Commission (Commission). The system will help ensure compliance with the Commission's conservation and management measures.

As a Contracting Party to the WCPFC and a member of the Commission, the United States is obligated to comply with this Convention provision. The National Marine Fisheries Service (NMFS) has been delegated the responsibility for implementing this and other provisions of the Convention.

Most of the United States (U.S.) vessels fishing for HMS on the high seas in the Convention Area already carry and operate VMS units under other laws and regulations. Hawaii and American Samoa longline vessels with limited access permits are required to do so under regulations promulgated under the Magnuson-Stevens Fishery Conservation and Management Act, and purse seine vessels are required to do so under the South Pacific Tuna Act. This new information collection requirement will impose a new collection burden only on those vessels fishing for HMS in the subject area that are not already required to carry and operate VMS units in the area.

2. Explain how, by whom, how frequently, and for what purpose the information will be used. If the information collected will be disseminated to the public or used to support information that will be disseminated to the public, then explain how the collection complies with the applicable Information Quality Guidelines.

Any vessel for which a "WCPFC Area Endorsement" (a new authorization that will be required of any U.S. vessel used for commercial fishing for HMS on the high seas in the Convention Area) has been issued will be required to carry a VMS unit and operate it at all times, except that the VMS unit may be turned off while the vessel is at port, provided that the vessel owner or operator notifies NMFS in advance of each such shutdown and each time the VMS unit is subsequently turned back on (termed "on/off reports"). In addition, "activation reports" will be a one-time occurrence per installed (or subsequently repaired and reinstalled) unit that will be made by the vessel owner or operator prior to the first use of the unit. Activation reports will be used by NMFS to incorporate the location reports from the VMS unit into the VMS system.

While the unit is operating, "position reports" from the vessel will be transmitted from the VMS units automatically at a specified frequency and received via a satellite communication system by NMFS and the Commission. Since the position reports will be automatically transmitted from the VMS unit, they will not impose any time burden on vessel owners or operators, but owners/operator will be responsible for the communication costs of the position reports to NMFS, which will be a function of their duration and frequency (the transmissions to the Commission will entail additional communication costs, but those costs will be borne by the Commission through its budget, and passed on to the U.S. government as part of the annual contributions of the United States to the Commission). The position reports will provide authorized users (primarily NMFS, including its Office for Law Enforcement (OLE), U.S. Coast Guard, and, only while a given vessel is on the high seas in the Convention Area, the Commission) with near real-time vessel location information. The frequency of these reports will be set by the Commission as high as one per hour, and that default frequency is used for the purpose of the burden estimates. These reports will be used to monitor, and thus help ensure, compliance with the Commission's conservation and management measures. They will also be used for scientific purposes, such as linking catch and effort information with vessel location.

When aware that transmission of automatic position reports from the VMS unit has been interrupted or when notified by NMFS that automatic position reports are not being received, the vessel owner or operator will be required to contact NMFS and follow the instructions provided, which might include submitting position reports by other means, such as by email, phone, or fax.

The information collected will not be disseminated to the public, but it will support information that will be disseminated to the public. National Oceanic and Atmospheric Administration (NOAA) complies with Office of Management and Budget (OMB) Information Quality Guidelines for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by federal agencies. VMS information is safeguarded from improper access, modification, or destruction to a degree commensurate with the risk and magnitude of harm that could result from the loss, misuse, or unauthorized access to or modification of such information. If the VMS data are used to support information disseminated to the public they will be synthesized or interpreted, and included in scientific and enforcement technical reports (*e.g.* regarding fishing patterns and compliance patterns). See response to Question 10 of this Supporting Statement for more information on confidentiality and privacy. The information collection is designed to yield data that meet all applicable information quality guidelines. Prior to dissemination, the information will be subjected to quality control measures and a pre-dissemination review pursuant to Section 515 of Public Law 106-554.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electric, mechanical, or other technological techniques or other forms of information technology.

The VMS information collection integrates current information technology in the fishery management and monitoring process. Once the VMS unit has been installed and activated, it automatically transmits reports of vessel location on a pre-programmed frequency, via satellite,

to a ground station, and then to the ultimate users. The collection of information is automatic and invisible to the vessel operator.

Many vessel owners have taken advantage of this technology by linking personal computers to VMS units to improve communication with other vessels, or by using the VMS unit's data output capability to supply vessel location information to navigational plotters. Although not related directly to location reporting and not part of this collection of information, there is potential for the VMS units to be used by fishermen to transmit their catch and effort data on a near real-time basis.

4. Describe efforts to identify duplication.

NMFS has identified the fleets that are already required to carry and operate VMS units as part of a NMFS-administered VMS. Owners/operators of vessels in these fleets will be required to authorize the Commission to receive position reports via their VMS units, but they will not bear any additional time burden or cost burden as a result of the data transmissions to the Commission. These fleets are the purse seine fleet operating under the South Pacific Tuna Treaty (about 40 vessels) and the longline fleets based in Hawaii and American Samoa (about 135 vessels).

Aside from the use of a VMS, NMFS has not identified any comparable programs that collect near real-time vessel location information.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

All fishing operations subject to this collection of information, with the possible exception of a few large-scale tuna purse seine, carrier, and bunker vessel operations, are small businesses.

As a member of the Commission, the United States has promoted the position that reporting rates should be frequent enough to fulfill the compliance function of the VMS but not so frequent as to be unduly costly. The default reporting period of one hour that has been adopted by the Commission appears to achieve that balance.

6. Describe the consequence to the Federal program or policy activities if the collection is not conducted or is conducted less frequently.

If the information is not collected, the U.S. government would not meet its obligations as a Contracting Party to the WCPFC and a member of the Commission, and would consequently fail to fulfill the provisions of the WCPFCIA. The lack of VMS data from the U.S. HMS fleets operating in the Convention Area would provide a disincentive to the other fishing nations in the region to provide VMS data for their fleets. The effective management of the fishery resources under the WCPFC would be compromised.

VMS vessel position reports on the order of one per hour are necessary to ensure compliance with temporal, spatial, and other types of restrictions and to facilitate the cost-effective use of

enforcement patrols. Less frequent reports would result in a higher likelihood of non-compliance.

7. Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

The collection is consistent with OMB guidelines except that the hourly VMS reports would be more frequent than quarterly. This frequency is mandated as a default by the Commission, which has determined it to be necessary to ensure compliance with its conservation and management measures.

8. Provide information on the PRA Federal Register Notice that solicited public comments on the information collection prior to this submission. Summarize the public comments received in response to that notice and describe the actions taken by the agency in response to those comments. Describe the efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

A proposed rule, RIN 0648-AV63, "Initial Implementation of the Western & Central Pacific Fisheries Convention Implementation Act," solicited public comments on this information collection. *Comments and draft responses are posted as supplementary documents. The only change in the final rule in response to these comments will be the addition of a second additional NOAA point of contact for submitting VMS unit on/off reports and receiving subsequent confirmations (in response to Comment 1 in the posted summary) - but specific information regarding POCs was not part of the original supporting statement, so there is no corresponding change in the supporting statement.*

9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

No payment or gifts to respondents will be provided.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation, or agency policy.

All data are collected by NMFS and will also be available to the U.S. Coast Guard and, only while a given vessel is on the high seas in the Convention Area, to the Commission, as well as other parties that receive authorization to receive and use the data pursuant to applicable policies and procedures (per NOAA Directive 06-101 *VMS Data Access and Dissemination Policy*, and NOAA Administrative Order (NAO) 216-100 *Protection of Confidential Fisheries Statistics*). Confidential data collected by NMFS are governed by regulations promulgated under the WCPFCIA and by NAO 216-100. Any of the collected information used by NMFS in the preparation of publicly disseminated information would first be aggregated and /or summarized to maintain the confidentiality of the information pertaining to the individual vessels.

Under the Commission's *Rules and Procedures for Protection of, Access to, and Dissemination of, Data Compiled by the Commission*, VMS data are defined as non-public domain data, and as such, the dissemination of these data to other parties will be authorized in accordance with the policies of confidentiality and security established in the Commission's Information Security Policy.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

No questions are asked of a sensitive nature.

12. Provide an estimate in hours of the burden of the collection of information.

The time burden associated with this collection will include time needed for:
(a) activation reports, (b) on/off reports, (c) VMS unit purchase and installation, and (d) VMS unit maintenance.

(a) Activation reports:

If the VMS unit has been newly installed or reinstalled or the communications service provider has changed since the previous activation, the vessel owner or operator must submit by mail, facsimile or email an activation report to NMFS that includes: vessel name; Coast Guard vessel documentation number, or if not documented, state or tribal registration number; VMS unit manufacturer and identification number; and telephone, facsimile or email contact information for the vessel owner or operator. Prior to leaving port, the owner/operator must also receive verbal or written confirmation from NMFS or the U.S. Coast Guard that proper transmissions are being received from the VMS unit.

VMS activation reports will be required for the projected 78 vessels that will be subject to this collection. Such vessels are expected to include the following: (1) 69 troll vessels, which is the maximum number of West Coast-based albacore troll vessels that fished in the Convention Area in any of the last five years; (2) 4 longline vessels, including the 3 Western Pacific-based vessels that were active as of April 2008 and the 1 West Coast-based vessel that has been active within the last two years and (3) 5 support vessels (i.e., carrier vessels, bunker vessels and other vessels used to support the operations of HMS harvesting vessels), which is the number which is roughly the projected number to become active in the Convention Area in the next few years. Thus it is projected that the owners/operators of a total of 78 vessels will be required to respond to this new VMS collection of information.

For the purpose of the following calculations (which include the time burden of receiving the confirmation from NMFS after submitting the activation report), it is estimated that the average lifespan of VMS units is four years and that repairs, changes in communication service providers or other circumstances requiring activation reports will occur an average of once per VMS unit lifespan; that is, in addition to the activation report required upon installation of a new unit, one

additional activation report would be required for that unit during its four-year lifespan. In summary, activation reports will be required once every two years, on average.

78 vessels x 0.5 responses/vessel-year x 0.083 hr (5 minutes)/response = 3.2 hr/yr
Total estimated burden per year = 3.2 hours
Total estimated responses per year = 39

(b) On/off reports:

On/off reports must be sent to NMFS by mail, facsimile or email, and must include the following information: the intent to turn on or turn off the VMS unit; the vessel's name; the vessel's Coast Guard documentation number, or if not documented, state or tribal registration number; and telephone, facsimile or email contact information for the vessel owner or operator. In the case of turning a VMS unit on, the vessel owner/operator must also, prior to leaving port, receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit.

Vessel owners/operators will be required to submit on/off reports only if they choose to turn off the VMS units while at port. Their decision of whether or not to do so will likely depend on the size of the vessel (owners/operators of smaller vessels are more likely to want or need to shut down the vessel's entire electrical systems while at port, which would necessitate shutdown of the VMS unit) and the duration of the stay at port (longer stays more likely to result in the VMS unit being shut down). The frequency of the on/off reports will depend on the frequency of port calls. It is roughly estimated that owners/operators of half of the 78 vessels subject to the collection will choose to shut down their VMS units at least once during a given year, and that for each of those 39 vessels, the VMS units will be shut down and subsequently turned back on five times per year, on average (thus requiring 10 on/off reports per year, on average). It is estimated that each on/off report will require 5 minutes, on average (including, in the case of turning a VMS unit on, the subsequent confirmation from NMFS).

> 39 vessels x 10 responses/vessel-year x 0.083 hr (5 minutes)/response = 32.5 hr/yr
> Total estimated burden per year = 32.5 (33) hours
> Total estimated responses per year = 390

(c) VMS unit purchase and installation:

VMS unit installation time will be required for the estimated 78 vessels that will be subject to the requirement. It is estimated that 4 hours per vessel will be required for each installation, for a total initial burden of 312 hours. For the purpose of deriving an annual burden, it is estimated that the average lifespan of VMS units is 4 years. With 1 installation per vessel every 4 years, the total estimated annual burden is 78 hours.

(d) VMS unit maintenance:

VMS unit maintenance may occasionally be required. It is estimated that each of the 78 vessels will bear an average annual maintenance burden of 1 hour (including time to contact NMFS and make the VMS unit available for maintenance), for a total annual burden of 78 hours.

Total: Based on the calculations in paragraphs (a)-(d), the estimated total new annual responses and burden associated with this collection are: 39 responses and 3.2 hours (activation reports) + 390 responses and 32.5 hours (on/off reports) + 20 responses and 78 hours (purchase and installation) + 78 responses and 78 hours (maintenance) = 527 responses and 192 hours.

13. Provide an estimate of the total annual cost burden to the respondents or record-keepers resulting from the collection (excluding the value of the burden hours in Question 12 above).

The cost burden associated with this collection will include costs for: (a) VMS unit purchase and installation, (b) VMS unit maintenance, and (c) position reports.

The costs of the activation reports and on/off reports are estimated to be nil: their preparation will require nothing other than the respondent's time, it is expected that all the reports will be submitted by facsimile or email, and the costs of sending reports by such means is estimated to be virtually zero.

(a) VMS unit purchase and installation:

The cost of purchasing and installing a typical new VMS unit is estimated to be about $4,000. With an estimated VMS unit lifetime of 4 years, the annualized cost per vessel is therefore about $1,000.

78 vessels x $1,000/vessel-yr = $78,000/yr

(b) VMS unit maintenance:

It is estimated that each of the 78 vessels will bear VMS unit maintenance costs averaging $250 per year.

78 vessels x $250/vessel-yr = $19,500/yr

(c) Position reports:

The communication costs of transmitting the position reports to NMFS will be borne by the vessel owner or operator. The transmission of the reports, at a reporting frequency of 24 reports per day, is estimated to cost $1.50 per vessel per day. As indicated in the response to Question 12, it is estimated that half of the 78 vessels subject to this collection will leave their VMS units turned on year-round, and half will choose to sometimes turn it off while in port. For those that choose to turn it off, it is estimated that they will do so five times per year on average, and that such off-periods will last 14 days on average. It is therefore estimated that 39 vessels will transmit position reports 365 days per year and 39 vessels will transmit position reports 295 days per year, and the total estimated cost burden will be $38,610 per year:

39 vessels x 365 days/yr x $1.50/day = $21,353
39 vessels x 295 days/yr x $1.50/day = $17,258

Total: $38,611

Total cost resulting from the collection: $78,000 + $19,500 + $38,611= $136,111.

14. <u>Provide estimates of annualized cost to the Federal government.</u>

The Commission will initially bear the costs associated with the participation of U.S. vessels in the Commission VMS, including the communication costs of transmitting the position reports from the VMS units to the Commission. However, those costs will be passed on to the Federal government as part of the annual contributions of the United States to the Commission. For the United States, in addition to the 78 "new" vessels that do not currently participate in a NMFS-administered VMS, approximately 175 longline vessels that already participate in a NMFS-administered VMS will be required to participate in the Commission VMS, for a total of 253 U.S. vessels in the Commission VMS. The Commission has formulated a provisional budget that anticipates a cost of approximately $400 per vessel in the VMS' first year of operation. Given the approximately 253 U.S. vessels that are expected to participate, the annual U.S. contribution for its vessels is therefore expected to be about $101,000 (253 vessels at $400 per vessel per year).

15. <u>Explain the reasons for any program changes or adjustments.</u>

This is a new program.

16. <u>For collections whose results will be published, outline the plans for tabulation and publication.</u>

The information collected is not generally intended for publication. NMFS, U.S. Coast Guard, and the Commission, as well as subsequent recipients, might use the data in such forms as technical reports of compliance patterns and related activities, but they would be presented in aggregated, non-confidential form. The data collected over a series of years might be used in scientific papers and publications, but again, in aggregated, non-confidential form.

17. <u>If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons why display would be inappropriate.</u>

NA

18. <u>Explain each exception to the certification statement identified in Item 19 of the OMB 83-I.</u>

NA

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

No statistical methods are employed.

WESTERN FISHBOAT OWNERS ASSOCIATION©

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June 1, 2009

William L. Robinson
Regional Administrator, NMFS Pacific
Islands Regional Office (PIRO), 1601
Kapiolani Blvd., Suite 1110, Honolulu,
HI 96814

Re: Proposed Rule for WCPFC - Indentfier # 0648–AV63

Dear Mr. Robinson:

Western Fishboat Owners Association (WFOA) would like to make the following comments on the proposed Rules for the WCPFC. I have selected the most pertinent sections and include comments within. Since the regulations will apply to albacore troll and baitboats fishing for albacore west of 150°W, North of the equator and it will apply to all fishing for albacore tuna south of the equator we are very concerned with following three points.

VMS: *Vessels will have to have NMFS approved VMS units which will transmit signals to the WCPFC Commission and NMFS which run about $4,000 and have a useful life of four years. There will be an estimated $250 for annual maintenance and $525 for transmissions on an annual basis. The VMS unit is required to be on at all times, whether in or out of the WCPFC Area. If a unit fails while at sea, NMFS can require radio reporting of positions, or end the trip.*

Our vessels are small with very little problems with by-catch, enforcement issues, or gear conflicts. Occasionally we have a fleet of 10-50 vessels that fish albacore by troll methods west or 150°W. Nearly all of the fish are returned to the west coast for landing and all is documented in logbooks. Therefore, we ask the following:

- How effective and useful is the VMS data collected now for management? As far as I can tell the only application so far has been to issue citations to vessels who have gone into "protected areas." There are very few MPA's in the offshore regions thus would be highly unlikely such a situation would involve a U.S. albacore troller.

- Why do the units have to be on 365 days a year? There have been fishermen who have receive

tickets for turning it off while in the ship yard doing repairs! It seems a declaration of departure and a check to see if the unit is on should serve the purpose.

- If the US is requiring it as part of WCPFC convention then NOAA should pay for installation as in other fisheries. The US albacore fleet is in economic distress and an important component of the coastal rural economy. Any new fees at this time would be detrimental to the family owned U.S. albacore fleet and community at this time.

Observers: *Vessels may be required to carry observers and it is the WCPFC's intention to have 5% observer coverage. Carrying an observer is estimated to cost $20/day, or $350 a trip depending on the length of the trip.*

Again to state the obvious, any albacore vessel operating in the region west of 150°W would be at sea anywhere from 25 -100 days. If they were required to pay observer rates of $20/day it would run more like $400 - $2000 per trip. This needs clarification and a possible cap of no more than $350 per trip. Also, for consideration:

- Most of these vessels are smaller in nature especially when compared to longliners and purse seiners. A typical albacore vessels that may operate in the region west of 150°W would be between 50 -100 feet in length with a crew of 2-3 persons. Most of the boats in the 50-65 foot range have limited space for observers especially for extended trips.

- Considering albacore trollers in the area may be at sea for 25 -100 days, how practical is it to have to carry an observer for the length of time in a fishery that has virtually no environmental or regulatory impact compared to other gear types.

- The vessels operate at least 7-10 days from any harbor and travel only 7-9 knots. To have to abort a trip because of a health or other problem with an observer would be problematic. WFOA questions who would reimburse the vessel for potential two to three weeks of lost time?

Vessel Identification: Vessels would be identified with, in this order of use, the international radio call sign, USCG documentation number, or State registration number, preceded by the letters "USA."

- Since under the U.S./Canadian albacore treaty U.S. vessels are already required to put a “U” in back of their documentation number, an addition to changing the whole format, another couple letters may be a problem for some smaller vessels because of space.

WFOA reminds you that the U.S. troll fleet is a small vessel fleet that fishes in far from shore. Vessels range from 35 -120 feet with an average of about 55 – 60 feet. Most are family owned and operated, with small crews, and very eco friendly gear. Many of these boats fish far offshore weeks from nearest harbors. When compared to high seas purse seiners and longliners our vessels are far from equal both in size, capacity, crew size, and economics.

Sincerely,

Wayne Heikkila
Executive Director

cc: Senator Dianne Feinstein (CA)
Senator Barbara Boxer (CA)
Senator Ron Wyden (OR)
Senator Jeff Merkley (OR)
Senator Patty Murray (WA)
Senator Maria Cantwell (WA)
Senator Daniel Inouye (HI)
Speaker of the House Nancy Pelosi (CA)
Representative Mike Thompson (CA)
Representative Wally Herger (CA)
Representative Sam Farr (CA)
Representative Peter Defazio (OR)
Representative David Wu (OR)
Representative Brian Baird (WA)
Representative Jay Inslee (WA)
Representative Norm Dicks (WA)
Mr. Donald McIsaac – PFMC
Ms. Kitty Simonds – WPFMC

American Tunaboat Association

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June 19, 2009

William L. Robinson c/o
Federal eRulemaking Portal
http://www/regulations.gov

RE: Comments regarding RIN 0648-AV 63 International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Initial Implementation of the Western and Central Pacific Fisheries Convention – Proposed rule

Dear Mr. Robinson:

Our organization represents the large U.S. flag purse seiners operating in the tropical Pacific Ocean. Our vessels have a long history of operating in the Pacific Ocean. We were instrumental in the development of the eastern and western Pacific purse seine tuna fisheries. We have continuously supported fair and effective conservation of tuna fisheries. Since our early development of the Pacific tuna fishery, fleets of many other countries have also entered the fishery. This has made the implementation of fair and effective management of the tuna fishery across all fleets more difficult. The tuna based Regional Fishery Management Organizations (RFMOs) have been struggling to manage these important fisheries effectively, fairly and equally among the participants in the fishery.

The U.S. tuna purse seine fleet supports effective conservation and management measures for the long term sustainability of tuna stocks. However, management of the fishery for the long term sustainability of the stocks will not be accomplished if the U.S. fleet is the only one that fully complies through effective monitoring and enforcement of regulations. It is vital to the survival of the U.S. fleet that our country negotiates RFMO measures that impose a comparable burden on all participants in the fishery. It is critical to the US fleet that US fishermen do not have to bear an unfair amount of the conservation burden. It is also critical to our survival that the domestic regulations implementing the RFMO measures not be significantly more burdensome on our fleet than those imposed on our foreign competitors. We are very concerned that these proposed regulations will be far more extensive, will be monitored much more closely and will be more burdensome on the U.S. fleet than those imposed on fleets of other countries that are members of the Western and Central Pacific Fisheries Commission (WCPFC).

The Magnuson-Stevens Fishery Conservation and Management Reauthorization Act requires our government to address illegal, unregulated and unreported (IUU) fishing and the bycatch of protected living marine resources. We believe it is also the responsibility of our government to monitor the actions of other governments to be sure that other governments implement substantially similar rules and regulations. Our government should promptly give notice to the

appropriate RFMO of any shortcomings in regulation implementation and enforcement by other member countries of the RFMO.

Following are specific comments about certain contents in the subject document:

Page 23967, 23977 300.212 (g) and 23978 300.213 (a)

2. *Vessel information*
   This section calls for changes in vessel information to be submitted within 15 days of the change. This requirement would be burdensome. Thirty (30) days would be a much more manageable timeframe.

Page 23968

4. *Vessel observer program*
   We have fully supported and have cooperated with the Pacific Islands Forum Fisheries Agency (FFA) observer program for about 20 years. The U.S. purse seine fleet has been the leader in the use of observer programs in the Western Pacific. We support the observers gathering the information truly needed to perform their required duties. We believe, however, that a clear listing of questions that the observers should appropriately ask should be developed and be provided to vessel management and operators and to observers. Certain information is proprietary to the fishing vessel operations and is not required for the observer to reasonably perform their duties. Having such a list is all the more critical with the expected expansion of the WCPFC observer program. Vessel responsibilities are spelled out in detail, but very little information is provided regarding the expected behavior and responsibilities of observers. These comments also apply to Page 23969, *9. Facilitation of enforcement and inspection* and to Page 23978, 300.215 *Observers (c) (1)* (ii).

   We would also like to take this opportunity to again express our strong belief that a debriefing of observers take place at the end of each trip. This can be conducted by NMFS staff; preferably also in the presence of the vessel Captain. The feedback to the vessel operators from observer reports is incomplete and untimely. It is only through effective and timely communications that vessel operators can improve their observer responsibilities to the benefit of all involved. This is a process that has been used for many years in the Eastern Pacific with IATTC observers.

Page 23976

Definition of *Fishing*

(5) Engaging in transshipment, either unloading or loading fish

Our vessels are required to transship in port. We believe that activities in port should not be considered fishing. Fishing trips start counting when vessels leave port and not while they are in port. This definition could improperly cause days in port to be counted against available fishing days.

Definition of *Fishing Vessel*

There has been a continuing debate as to whether carriers and refueling vessels should properly be treated as fishing vessels in virtually all ways. It is our position that they should not be treated that way. These carrier and bunkering vessels used in association with the purse seine fishery are used on an opportunistic basis and are not part of the regular fishing fleet. It is reasonable that these vessels be registered and be identified by information clearly called for in WCPFC regulations, but the U.S. should be careful to not impose more regulations on these vessels than

required. We hope that the US will continue to negotiate reasonable working arrangements for these vessels.

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Page 23980

Vessel monitoring system. § 300.219.c.3.iii:
"Prior to leaving port, receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit"

There is concern that lack of availability of SAC staff will cause an unreasonable loss of fishing time by fishing vessels. These are not 9 am to 5 pm operations. We would like to see a system that would allow fishing vessels to confirm the proper operation of their VMS / MTU units outside of regular office hours of the SAC. One suggestion is that a vessel be able to contact a representative of the manufacturer of the involved VMS / MTU and to have them confirm in writing the proper operation of the device. The vessel could then go fishing for that weekend or holiday period and contact SAC after they open up to confirm that they are properly receiving the signal from the fishing vessel. Fishing vessels operate every available day and circumstances are often out of their control that would prevent finalization of a VMS / MTU during SAC office hours. Differences in time zones among vessel operating hours further exacerbate this problem.

Failure of VMS unit, § 300.219.c.4.ii
"If the vessel is at sea: The vessel owner, operator, or designee shall contact the SAC by telephone, facsimile, or email at the earliest opportunity during the SAC's business hours and identify the caller and vessel. The vessel operator shall follow the instructions provided by the SAC, which could include, but are not limited to: ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means; and, repair or replace the VMS unit and ensure it is operable before starting the next trip."

We expect that SAC management will be reasonable in their directions given to fishing vessels in the event of a failure of these units. It could easily cost a vessel several $100,000s if it is forced to return to port to replace or repair a unit during active fishing operations. Equipment can break down and the vessel should not be unreasonably penalized for an event that is out of its control. It should also be noted that repair facilities, replacement equipment and technicians are not sitting waiting at every port for a vessel to come in with a broken VMS. Replacement and repair of this equipment often takes time to arrange. Vessels can be adequately monitored for at least 30 days by manual position reporting for reasonable periods of time. Vessels should be allowed to make necessary changes at the end of a fishing trip. Our purse seiners have for many years been working closely in cooperating with the FFA on similar issues with virtually no significant problems

Thank you for your consideration.

Sincerely,

Paul Krampe
Executive Director
American Tunaboat Association

Western
Pacific
Regional
Fishery
Management
Council

NMFS/PIRO
Received
JUL 07 2009

July 2, 2009

Mr. Bill Robinson
Regional Administrator
NMFS Pacific Islands Regional Office
1601 Kapiolani Blvd., Suite 1200
Honolulu, Hawaii 96814-4700

Dear Bill:

Below are our comments on NMFS' proposed rule (74 FR 23965) and associated Environmental Assessment (EA) regarding the implementation of regulations needed to carry out U.S. obligations under the Western and Central Pacific Fisheries Commission (WCPFC) relating to: 1) authorization to fish, 2) vessel information, 3) vessel monitoring systems (VMS), 4) vessel observer program, 5) vessel identification, 6) purse seine transshipment restrictions, 7) reporting and recordkeeping, 8) compliance with laws of other nations, 9) facilitation of enforcement and inspection, and 10) confidentiality of information.

1. Authorization to fish

The proposed rule would require U.S. vessels fishing in the WCPFC area to obtain a WCPFC Area Endorsement from NMFS. This endorsement would be linked to the High Seas Fishing and Compliance Act (HSFCA) permit application. Similar to period of validity to the HSFCA permit, the WCPFC Area Endorsement would be valid for five years. Chapter 4 of the EA indicates that NMFS proposes to charge a fee of $25 (or $5 per year) for the WCPFC Area Endorsement. While $25 is a small amount relative to vessel revenues, NMFS does not provide adequate reasoning of why or how this amount will recoup administrative costs, resulting in the perception of NMFS attempting to "nickel and dime" U.S. fishing vessels. NMFS should not charge any fees for WCPFC Area Endorsements, but if NMFS insists, then it should describe in the final rule or EA how the total amount of monies received from area endorsement applications would offset administrative costs.

2. Vessel information

Section 2.3 of the EA describes the new information that will be solicited from vessel owners. This includes information on: nationality of master; vessel communication types; type of fishing or method; carrying capacity, including freezer type, capacity and number, and fish hold capacity; and color photograph of vessel.

As there could be confusion on the units of measurements related to capacity as well as confusion on the level of detail of required information, NMFS should produce a comprehensive compliance guide for vessel owners to follow.

3. Vessel Monitoring System

The Council's VMS policy is clear that government funding should pay for VMS. As the proposed rule and EA indicate, 73 vessels (69 albacore and 2 western general longline permitted vessels) would have to buy, install, and maintain VMS units as well as pay for VMS transmission costs. This would cost approximately up to $1,775 per year or $7,100 over the course of four years, which is a VMS unit's general lifespan. It does not make sense to break out the VMS unit cost by year as the VMS unit itself costs approximately $4,000. The EA does not describe if NMFS has pursed government funding to cover these costs for the 73 vessels affected by the rule. NMFS should find government funding to make this requirement equitable amongst fishery participants. Furthermore, the proposed rule would require albacore trolling vessels continue to transmit their VMS positions while fishing in the EPO. This is seems particularly onerous and costly for this fleet, especially since the proposed rule is in response to WCPFC measures. The proposed rule would also require that vessel operators provide NMFS with a notice when they power down in port and shut off power supply to their VMS unit. Vessel operators would also have to inform NMFS that they have powered back on and that they are going on a fishing trip. As this not current practice, NMFS will need to develop a detailed outreach plan to inform fishery participants.

4. High Seas Boarding and Inspection

As mentioned in the EA, high seas boarding and inspection of US vessels will likely be rare. As required under WCPFC boarding and inspection procedures, the US government must be notified by the boarding nation prior to boarding a US vessel. In the case of such a boarding, NMFS or the USCG should establish and maintain communication with the US vessel during the boarding and inspection and also follow up with the vessel to ascertain if any problems occurred. NMFS should also provide guidelines for US vessel operators to follow in the event of a boarding on the high seas by WCPFC member nation.

5. Vessel observer program

The EA is unclear on why alternatives were not identified or considered for implementation of the WCPFC observer program. The VMS category considered alternatives that would trigger VMS requirements if certain temporal and spatial characteristics were met. However, similar alternatives were considered for the vessel observer program category. The EA does not provide any explanation on why NMFS has no discretion in implementing the WCPFC observer program. The observer requirement could be especially onerous for US albacore fishermen who fish on relatively small vessels, and no reason is provided for potentially requiring them to carry observers when they may not fishing in the Convention area. NMFS should include and analyze this alternative that would avoid this situation in the Final EA.

As observer costs in the Hawaii and American Samoa longline fisheries are paid for by NMFS, observer costs for the Western Pacific general longline permit vessels should also be paid for by NMFS.

6. Purse seine transshipment requirements

The proposed rule's prohibition to prohibit purse seine transshipments at sea is appropriate. However, NMFS should provide information on the impact of this requirement, if any, and also describe if the US fleet historically transshipped, including their locations, in past years.

7. Reporting and recordkeeping

In the proposed rule, NMFS states that any US commercial fishing vessel fishing for HMS anywhere in the Pacific Ocean would be required to submit catch and effort information to NMFS. The proposed rule goes on to say that the reporting requirements are already met by MSA, HSFCA, Tuna Conventions Act, SPTA, US-Canada Albacore Treaty, and State regulations. NMFS indicates that this is applicable to 5,000 vessels but offers no detailed information in the proposed rule or EA to for the reader verify this. Furthermore, the data collection process is not discussed in detail in the proposed rule or EA on how NMFS is currently obtaining this important information.

8. Compliance with the laws of other nations

The proposed rule's requirement to comply with the laws other nations is appropriate. However, the EA does not provide any current or historical information on the number of US vessels that fish in the EEZs of other member nations. To get a better understanding on the issue, the Final EA should include this information.

9. Facilitation of enforcement and inspection

The proposed rule states that the operator of any US fishing vessel must accept and assist boarding and inspection by contracting parties of the WCPFC. As there are US vessels that have PRIA bottomfish (3), lobster (2), and troll (12) permits, NMFS should provide information to these vessel operators so that they are aware of potential boarding and inspection by non US parties. The final rule and Final EA should describe this outreach as well as the number and type of other US fishing vessels that could be subject to non-US boarding and inspection.

10. Confidentiality of information

The proposed rule and the EA offer no details on how the proposed procedures vary or are consistent with current procedures, what specific procedures will be followed, or what specific information will be protected. Without this information, it is not possible to comment on this issue. All information submitted by or collected from vessel owners, operators, or crew must be treated as confidential business information and not released in any manner that reveals the identities, operations, or fishing locations of any individual vessel. Fishing operations, locations, and catches are considered to be proprietary business information and must be treated as such.

Furthermore, the EA should discuss the current status of agreements within the WCPFC with respect to confidential information.

Conclusion

Overall, the EA should be improved to discuss the impact of the "non-discretionary" obligations and hope NMFS considers does so in the Final EA. In addition, we strongly believe that NMFS should pay for the VMS and Observer costs for the two longline vessels operating out of CNMI as well as for the albacore troll fleet. Finally, Table 41 of the EA indicates that NMFS contacted the Council for information; however, neither myself nor my staff have record of this. Thank you for considering our comments.

Sincerely,

Kitty M. Simonds

Kitty M. Simonds
Executive Director

Public comments on proposed rule 0648-AV63, with draft responses

VMS requirements:

Comment 1: The proposed rule includes a requirement in section 300.219(c)(3)(iii) that prior to leaving port, a vessel owner and operator must "receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit." The lack of availability of staff in the NOAA Office of Law Enforcement, Pacific Islands Division ("OLE-PID"), may cause an unreasonable loss of fishing time for fishing vessels, which do not operate on a 9 a.m. to 5 p.m. basis and operate in various time zones. There should be a system that allows confirmation of VMS unit operation outside the regular office hours of OLE-PID. One suggestion is to allow a vessel to contact, and receive confirmation from, a representative of the VMS unit manufacturer, after which the vessel could contact and receive confirmation from the OLE-PID once it opens for business.

Response: The referenced proposed requirement applies in the case that the vessel owner and operator have chosen to shut down the VMS unit while at port or otherwise not at sea. NMFS recognizes that the office hours of OLE-PID are somewhat constraining, but notes that the owner and operator of a fishing vessel need not wait until immediately prior to the port departure time to turn on the VMS unit and submit the on/off report to NMFS. In order to provide a few additional hours each day for these communication purposes, NMFS has made a revision to the final rule such that vessel owners and operators may submit the VMS unit on/off reports to, and receive confirmations from, either the OLE-PID or the NOAA Office of Law Enforcement's VMS Helpdesk. The contact information and business hours for the latter are: telephone: 888-219-9228; email: ole.helpdesk@noaa.gov; 7 a.m. to 11 p.m. [need to confirm hours], Eastern Time.

Comment 2: Under the proposed rule, if a VMS unit fails while the vessel is at sea, the vessel owner, operator, or designee must contact the OLE-PID by telephone, facsimile, or email at the earliest opportunity during the OLE-PID's business hours, identify the caller and vessel, and follow the instructions given by the OLE-PID, which could include ceasing fishing, stowing fishing gear, returning to port, and/or submitting periodic position reports at specified intervals by other means. We expect that the OLE-PID will be reasonable in the instructions it gives in these cases.

Response: In determining what instructions to give to the operator of a fishing vessel whose VMS unit has failed while at sea, the OLE-PID would indeed try to be reasonable, and in doing so would take into account the specific circumstances of the case.

Comment 3: Given that albacore troll and baitboats are small, have little problems with bycatch, enforcement issues, or gear conflicts, land nearly all their fish on the U.S. west coast and document their catch in logbooks, and there are few marine protected areas in offshore regions where U.S. albacore troll vessels operate, how effective and useful will the required VMS data be?

Response: The United States is obligated, as a Contracting Party to the Convention, to implement Article 24 of the Convention, which calls for each WCPFC member to require that its fishing vessels used to fish for highly migratory fish stocks on the high seas in the Convention Area use near real-time satellite position-fixing transmitters while in such areas. Apart from this international obligation, NMFS believes that requiring U.S. albacore vessels, however small and free of problems, to carry VMS units, would provide information that will be useful for scientific and compliance-related purposes.

Comment 4: Why is it proposed that the VMS units have to be turned on 365 days per year? A declaration of departure and a check to see if the VMS unit is on should serve the purpose.

Response: Under the proposed rule, the VMS unit could be shut down while the fishing vessel is at port or otherwise not at sea, provided that the OLE-PID is notified both in advance of the shut-down and upon turning the VMS unit back on, and that prior to subsequently leaving port, the vessel owner and operator receive verbal or written confirmation from NMFS that proper transmissions are being received from the VMS unit.

Comment 5: If the United States is requiring VMS units under the Convention then NOAA should pay for installation as in other fisheries. The U.S. albacore fleet is in economic distress and is an important component of the coastal rural economy; any new fees at this time would be detrimental to the family-owned U.S. albacore fleet and community at this time.

Response: NMFS is indeed requiring that VMS units be carried in order to implement the provisions of the Convention, and NMFS recognizes that the proposed VMS requirements would bring new costs to businesses that operate HMS fishing vessels in the Convention Area. NMFS does not agree that NMFS or the U.S. government should pay for installation of the VMS units, but notes that vessel owners might be eligible for reimbursement for the cost of VMS units under a program administered by the NOAA Office of Law Enforcement. Further information is available on the website of the Pacific States Marine Fisheries Commission: http://www.psmfc.org/Vessel_Monitoring_System.

Comment 6: According to the proposed rule and EA, 73 vessels would have to buy, install, and maintain VMS units as well as pay for VMS transmission costs. This would cost approximately up to $1,775 [per vessel] per year or $7,100 over the course of four years, which is a VMS unit's general lifespan. It does not make sense to break out the VMS unit cost by year, as the VMS unit itself costs approximately $4,000. The EA does not describe whether NMFS has pursued government funding to cover these costs for the 73 affected vessels. NMFS should find government funding to make this requirement equitable amongst fishery participants – we strongly believe that NMFS should pay for the VMS costs for the two longline vessels operating out of CNMI, as well as for the albacore troll fleet. Furthermore, the proposed rule would require albacore trolling vessels to continue to transmit their VMS positions while fishing in the EPO. This seems particularly onerous and costly for this fleet, especially since the proposed rule is in response to WCPFC measures. The proposed rule would also require that vessel operators provide NMFS with a notice when they power down in port and shut off power supply to their VMS unit. Vessel operators would also have to inform NMFS that they have powered back on

and that they are going on a fishing trip. As this is not current practice, NMFS will need to develop a detailed outreach plan to inform fishery participants.

Response: With respect to breaking out the VMS unit costs by year, NMFS annualized the estimated cost of purchasing and installing a VMS unit in order to express expected compliance costs in terms that could be compared with, and added to, the compliance costs of other aspects of the proposed requirements – that is, in annual terms (the annualized cost of a VMS unit that costs $4,000 to purchase and install and that has a lifespan of four years would be about $1,000). With respect to who should pay the costs of the VMS-related requirements, NMFS does not agree that NMFS or the U.S. government should pay, but notes that vessel owners might be eligible for reimbursement for the cost of VMS units under a program administered by the NOAA Office of Law Enforcement. Further information is available on the website of the Pacific States Marine Fisheries Commission: http://www.psmfc.org/Vessel_Monitoring_System. With respect to the costs and burden of having to transmit position reports via VMS while a vessel is fishing in the EPO, outside the Convention Area, NMFS considered alternatives that would not require such reporting (see the IRFA, FRFA, EA, and RIR, particularly Alternatives B and C in the latter two). Position reports will cost about $1.50 per day, so the annual VMS-related compliance costs of Alternative B, which would require position reports to be transmitted only while the vessel is on the high seas in the Convention Area, would be about $105-285 less than under the proposed rule for albacore troll vessels, depending on where they fish. However, allowing the VMS unit to be turned on and off depending on where at sea the vessel is would make it more difficult to ensure that position reports are transmitted while in the Convention Area. For that reason, NMFS believes that the benefits of the more onerous alternative of requiring position reports everywhere at sea outweigh its costs. With respect to informing fishery participants about these new VMS-related requirements, NMFS does not intend to prepare an “outreach plan”, but it has prepared a small entity compliance guide, available at [insert url], for this purpose, and NMFS will use various means to reach out to fishery participants to ensure they are aware of the new requirements.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING 16 U.S.C. 1821

95-354, 99-659, 102-251, 104-297

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone, [within the special areas,]* or for anadromous species or Continental Shelf fishery resources beyond the exclusive economic zone [such zone or areas]*, unless such foreign fishing—

(1) is authorized under subsections (b) or (c) or section 204(e), or under a permit issued under section 204(d);

(2) is not prohibited by subsection (f); and

(3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

(b) EXISTING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (subject to the provisions of section 202(b) or (c)), if such agreement—

(1) was in effect on the date of enactment of this Act; and

(2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

(c) GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—Foreign fishing described in subsection (a) may be conducted pursuant to an international fishery agreement (other than a treaty) which meets the requirements of this subsection if such agreement becomes effective after application of section 203. Any such international fishery agreement shall hereafter in this Act be referred to as a "governing international fishery agreement". Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this Act. It is the sense of the Congress that each such agreement shall include a binding commitment, on the part of such foreign nation and its fishing vessels, to comply with the following terms and conditions:

(1) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by all regulations promulgated by the Secretary pursuant to this Act, including any regulations promulgated to implement any applicable fishery management plan or any preliminary fishery management plan.

97-453, 104-297

(2) The foreign nation, and the owner or operator of any fishing vessel fishing pursuant to such agreement, will abide by the requirement that—

(A) any officer authorized to enforce the provisions of this Act (as provided for in section 311) be permitted—

(i) to board, and search or inspect, any such vessel at any time,

(ii) to make arrests and seizures provided for in section 311(b) whenever such officer has reasonable cause to believe, as a result of such a search or inspection, that any such vessel or any person has committed an act prohibited by section 307, and

(iii) to examine and make notations on the permit issued pursuant to section 204 for such vessel;

(B) the permit issued for any such vessel pursuant to section 204 be prominently displayed in the wheelhouse of such vessel;

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines to be appropriate, be installed and maintained in working order on each such vessel;

(D) United States observers required under subsection (h) be permitted to be stationed aboard any such vessel and that all of the costs incurred incident to such stationing, including the costs of data editing and entry and observer monitoring, be paid for, in accordance with such subsection, by the owner or operator of the vessel;

(E) any fees required under section 204(b)(10) be paid in advance;

(F) agents be appointed and maintained within the United States who are authorized to receive and respond to any legal process issued in the United States with respect to such owner or operator; and

(G) responsibility be assumed, in accordance with any requirements prescribed by the Secretary, for the reimbursement of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation;

and will abide by any other monitoring, compliance, or enforcement requirement related to fishery conservation and management which is included in such agreement.

95-354

(3) The foreign nation and the owners or operators of all of the fishing vessels of such nation shall not, in any year, harvest an amount of fish which exceeds such nation's allocation of the total allowable level of foreign fishing, as determined under subsection (e).

97-453

(4) The foreign nation will—

(A) apply, pursuant to section 204, for any required permits;

(B) deliver promptly to the owner or operator of the appropriate fishing vessel any permit which is issued under that section for such vessel;

(C) abide by, and take appropriate steps under its own laws to assure that all such owners and operators comply with, section 204(a) and the applicable conditions and restrictions established under section 204(b)(7); and

(D) take, or refrain from taking, as appropriate, actions of the kind referred to in subsection (e)(1) in order to receive favorable allocations under such subsection.

96-561, 101-267, 109-479

(d) TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, is that portion of the optimum yield of such fishery which cannot, or will not be harvested by vessels of the United States, as determined in accordance with this Act. Allocations of the total allowable level of foreign fishing are discretionary, except that the total allowable level shall be zero for fisheries determined by the Secretary to have adequate or excess domestic harvest capacity.

(e) ALLOCATION OF ALLOWABLE LEVEL.—

96-61, 96-561, 97-453, 97-623, 98-623, 99-659, 102-251

(1) (A) The Secretary of State, in cooperation with the Secretary, may make allocations to foreign nations from the total allowable level of foreign fishing which is permitted with respect to each fishery subject to the exclusive fishery management authority of the United States.

(B) From the determinations made under subparagraph (A), the Secretary of State shall compute the aggregate of all of the fishery allocations made to each foreign nation.

(C) The Secretary of State shall initially release to each foreign nation for harvesting up to 50 percent of the allocations aggregate computed for such nation under subparagraph (B), and such release of allocation shall be apportioned by the Secretary of State, in cooperation with the Secretary, among the individual fishery allocations determined for that nation under subparagraph (A). The basis on which each apportionment is made under this subparagraph shall be stated in writing by the Secretary of State.

(D) After the initial release of fishery allocations under subparagraph (C) to a foreign nation, any subsequent release of an allocation for any fishery to such nation shall only be made—

(i) after the lapse of such period of time as may be sufficient for purposes of making the determination required under clause (ii); and

(ii) if the Secretary of State and the Secretary, after taking into account the size of the allocation for such fishery and the length and timing of the fishing season, determine in writing that such nation is complying with the purposes and intent of this paragraph with respect to such fishery.

If the foreign nation is not determined under clause (ii) to be in such compliance, the Secretary of State shall reduce, in a manner and quantity he considers to be appropriate (I) the remainder of such allocation, or (II) if all of such allocation has been released, the next allocation of such fishery, if any, made to such nation.

(E) The determinations required to be made under subparagraphs (A) and (D)(ii), and the apportionments required to be made under subparagraph (C), with respect to a foreign nation shall be based on—

(i) whether, and to what extent, such nation imposes tariff barriers or nontariff barriers on the importation, or otherwise restricts the market access, of both United States fish and fishery products, particularly fish and fishery products for which the foreign nation has requested an allocation;

(ii) whether, and to what extent, such nation is cooperating with the United States in both the advancement of existing and new opportunities for fisheries exports from the United States through the purchase of fishery products from United States processors, and the advancement of fisheries trade through the purchase of fish and fishery products from United States fishermen, particularly fish and fishery products for which the foreign nation has requested an allocation;

(iii) whether, and to what extent, such nation and the fishing fleets of such nation have cooperated with the United States in the enforcement of United States fishing regulations;

(iv) whether, and to what extent, such nation requires the fish harvested from the exclusive economic zone [or special areas]* for its domestic consumption;

(v) whether, and to what extent, such nation otherwise contributes to, or fosters the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

(vi) whether, and to what extent, the fishing vessels of such nation have traditionally engaged in fishing in such fishery;

(vii) whether, and to what extent, such nation is cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

(viii) such other matters as the Secretary of State, in cooperation with the Secretary, deems appropriate.

96-61, 96-118

(2) (A) For the purposes of this paragraph—

(i) The term "certification" means a certification made by the Secretary that nationals of a foreign country, directly or indirectly, are conducting fishing operations or engaging in trade or taking which diminishes the effectiveness of the International Convention for the Regulation of Whaling. A certification under this section shall also be deemed a certification for the purposes of section 8(a) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978(a)).

(ii) The term "remedial period" means the 365-day period beginning on the date on which a certification is issued with respect to a foreign country.

(B) If the Secretary issues a certification with respect to any foreign country, then each allocation under paragraph (1) that—

(i) is in effect for that foreign country on the date of issuance; or

(ii) is not in effect on such date but would, without regard to this paragraph, be made to the foreign country within the remedial period;

shall be reduced by the Secretary of State, in consultation with the Secretary, by not less than 50 percent.

(C) The following apply for purposes of administering subparagraph (B) with respect to any foreign country:

(i) If on the date of certification, the foreign country has harvested a portion, but not all, of the quantity of fish specified under any allocation, the reduction under subparagraph (B) for that allocation shall be applied with respect to the quantity not harvested as of such date.

(ii) If the Secretary notified the Secretary of State that it is not likely that the certification of the foreign country will be terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the period for which an allocation is applicable or before the close of the remedial period (whichever close first occurs) the Secretary of State, in consultation with the Secretary, shall reallocate any portion of any reduction made under subparagraph (B) among one or more foreign countries for which no certification is in effect.

(iii) If the certification is terminated under such section 8(d) during the remedial period, the Secretary of State shall return to the foreign country that portion of any allocation reduced under subparagraph (B) that was not reallocated under clause (ii); unless the harvesting of the fish covered by the allocation is otherwise prohibited under this Act.

(iv) The Secretary may refund or credit, by reason of reduction of any allocation under this paragraph, any fee paid under section 204.

(D) If the certification of a foreign country is not terminated under section 8(d) of the Fishermen's Protective Act of 1967 before the close of the last day of the remedial period, the Secretary of State—

(i) with respect to any allocation made to that country and in effect (as reduced under subparagraph (B)) on such last day, shall rescind, effective on and after the day after such last day, any unharvested portion of such allocation; and

(ii) may not thereafter make any allocation to that country under paragraph (1) until the certification is terminated.

95-354

(f) RECIPROCITY.—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

95-354

(g) PRELIMINARY FISHERY MANAGEMENT PLANS.—The Secretary, when notified by the Secretary of State that any foreign nation has submitted an application under section 204(b), shall prepare a preliminary fishery management plan for any fishery covered by such application if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented, pursuant to title III, before March 1, 1977. To the extent practicable, each such plan—

(1) shall contain a preliminary description of the fishery and a preliminary determination as to—

(A) the optimum yield from such fishery;

(B) when appropriate, the capacity and extent to which United States fish processors will process that portion of such optimum yield that will be harvested by vessels of the United States; and

(C) the total allowable level of foreign fishing with respect to such fishery;

(2) shall require each foreign fishing vessel engaged or wishing to engage in such fishery to obtain a permit from the Secretary;

(3) shall require the submission of pertinent data to the Secretary, with respect to such fishery, as described in section 303(a)(5); and

(4) may, to the extent necessary to prevent irreversible effects from overfishing, with respect to such fishery, contain conservation and management measures applicable to foreign fishing which—

(A) are determined to be necessary and appropriate for the conservation and management of such fishery,

(B) are consistent with the national standards, the other provisions of this Act, and other applicable law, and

(C) are described in section 303(b)(2), (3), (4), (5), and (7).

Each preliminary fishery management plan shall be in effect with respect to foreign fishing for which permits have been issued until a fishery management plan is prepared and implemented, pursuant to title III, with respect to such fishery. The Secretary may, in accordance with section 553 of title 5, United States Code, also prepare and promulgate interim regulations with respect to any such preliminary plan. Such regulations shall be in effect until regulations implementing the applicable fishery management plan are promulgated pursuant to section 305.

(h) FULL OBSERVER COVERAGE PROGRAM.—

96-561, 99-569, 102-251

(1) (A) Except as provided in paragraph (2), the Secretary shall establish a program under which a United States observer will be stationed aboard each foreign fishing vessel while that vessel is engaged in fishing within the exclusive economic zone [or special areas]*.

(B) The Secretary shall by regulation prescribe minimum health and safety standards that shall be maintained aboard each foreign fishing vessel with regard to the facilities provided for the quartering of, and the carrying out of observer functions by, United States observers.

99-659, **104-297, 109-479**

(2) The requirement in paragraph (1) that a United States observer be placed aboard each foreign fishing vessel may be waived by the Secretary if he finds that—

(A) in a situation where a fleet of harvesting vessels transfers its catch taken within the exclusive economic zone [or special areas]* to another vessel, aboard which is a United States observer, the stationing of United States observers on only a portion of the harvesting vessel fleet will provide a representative sampling of the by-catch of the fleet that is sufficient for purposes of determining whether the requirements of the applicable management plans for the by-catch species are being complied with;

(B) in a situation where the foreign fishing vessel is operating under a Pacific Insular Area fishing agreement, the Governor of the applicable Pacific Insular Area, in consultation with the Western Pacific Council, has established an observer coverage program or other monitoring program that the Secretary, in consultation with the Western Pacific Management Council, determines is adequate to monitor harvest, bycatch, and compliance with the laws of the United States by vessels fishing under the agreement;

(C) the time during which a foreign fishing vessel will engage in fishing within the exclusive economic zone [or special areas]* will be of such short duration that the placing of a United States observer aboard the vessel would be impractical; or

(D) for reasons beyond the control of the Secretary, an observer is not available.

97-453

(3) Observers, while stationed aboard foreign fishing vessels, shall carry out such scientific, compliance monitoring, and other functions as the Secretary deems necessary or appropriate to carry out the purposes of this Act; and shall cooperate in carrying out such other scientific programs relating to the conservation and management of living resources as the Secretary deems appropriate.

(4) In addition to any fee imposed under section 204(b)(10) of this Act and section 10(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1980(e)) with respect to foreign fishing for any year after 1980, the Secretary shall impose, with respect to each foreign fishing vessel for which a permit is issued under such section 204, a surcharge in an amount sufficient to cover all the costs of providing a United States observer aboard that vessel. The failure to pay any surcharge imposed under this paragraph shall be treated by the Secretary as a failure to pay the permit fee for such vessel under section 204(b)(10). All surcharges collected by the Secretary under this paragraph shall be deposited in the Foreign Fishing Observer Fund established by paragraph (5).

(5) There is established in the Treasury of the United States the Foreign Fishing Observer Fund. The Fund shall be available to the Secretary as a revolving fund for the purpose of carrying out this subsection. The Fund shall consist of the surcharges deposited into it as required under paragraph (4). All payments made by the Secretary to carry out this subsection shall be paid from the Fund, only to the extent and in the amounts provided for in advance in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of this subsection shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

97-453

(6) If at any time the requirement set forth in paragraph (1) cannot be met because of insufficient appropriations, the Secretary shall, in implementing a supplementary observer program:

(A) certify as observers, for the purposes of this subsection, individuals who are citizens or nationals of the United States and who have the requisite education or experience to carry out the functions referred to in paragraph (3);

(B) establish standards of conduct for certified observers equivalent to those applicable to Federal personnel;

(C) establish a reasonable schedule of fees that certified observers or their agents shall be paid by the owners and operators of foreign fishing vessels for observer services; and

(D) monitor the performance of observers to ensure that it meets the purposes of this Act.

97-453, 99-659, 102-251, **104-297**

(i) RECREATIONAL FISHING.—Notwithstanding any other provision of this title, foreign fishing vessels which are not operated for profit may engage in recreational fishing within the exclusive economic zone, [special areas,]* and the waters within the boundaries of a State subject to obtaining such permits, paying such reasonable fees, and complying with such conditions and restrictions as the Secretary and the Governor of the State (or his designee) shall impose as being necessary or appropriate to insure that the fishing activity of such foreign vessels within such zone, [areas,]* or waters, respectively, is consistent with all applicable Federal and State laws and any applicable fishery management plan implemented under section 304. The Secretary shall consult with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating in formulating the conditions and restrictions to be applied by the Secretary under the authority of this subsection.

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS 16 U.S.C. 1822

(a) NEGOTIATIONS.—The Secretary of State—

(1) shall renegotiate treaties as provided for in subsection (b);

(2) shall negotiate governing international fishery agreements described in section 201(c);

(3) may negotiate boundary agreements as provided for in subsection (d);

(4) shall, upon the request of and in cooperation with the Secretary, initiate and conduct negotiations for the purpose of entering into international fishery agreements--

(A) which allow fishing vessels of the United States equitable access to fish over which foreign nations assert exclusive fishery management authority, and

(B) which provide for the conservation and management of anadromous species and highly migratory species; and

(5) may enter into such other negotiations, not prohibited by subsection (c), as may be necessary and appropriate to further the purposes, policy, and provisions of this Act.

99-659, 102-251

(b) TREATY RENEGOTIATION.—The Secretary of State, in cooperation with the Secretary, shall initiate, promptly after the date of enactment of this Act, the renegotiation of any treaty which pertains to fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977) [or special areas]*, or for anadromous species or Continental Shelf fishery resources beyond such zone or area[s]*, and which is in any manner inconsistent with the purposes, policy, or provisions of this Act, in order to conform such treaty to such purposes, policy, and provisions. It is the sense of Congress that the United States shall withdraw from any such treaty, in accordance with its provisions, if such treaty is not so renegotiated within a reasonable period of time after such date of enactment.

99-659, 102-251, 104-297

(c) INTERNATIONAL FISHERY AGREEMENTS.—No international fishery agreement (other than a treaty) which pertains to foreign fishing within the exclusive economic zone (or within the area that will constitute such zone after February 28, 1977) [or special areas,]* or for anadromous species or Continental Shelf fishery resources beyond such zone or area[s]*—

(1) which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended; or

(2) may be entered into after May 31, 1976;

by the United States unless it is in accordance with the provisions of section 201(c) or section 204(e).

99-659

(d) BOUNDARY NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, may initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the exclusive economic zone of the United States in relation to any such nation.

101-627

(e) HIGHLY MIGRATORY SPECIES AGREEMENTS.—

(1) EVALUATION.—The Secretary of State, in cooperation with the Secretary, shall evaluate the effectiveness of each existing international fishery agreement which pertains to fishing for highly migratory species. Such evaluation shall consider whether the agreement provides for—

(A) the collection and analysis of necessary information for effectively managing the fishery, including but not limited to information about the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the catch and bycatch levels in the fishery, and the present and probable future condition of any stock of fish involved;

(B) the establishment of measures applicable to the fishery which are necessary and appropriate for the conservation and management of the fishery resource involved;

(C) equitable arrangements which provide fishing vessels of the United States with (i) access to the highly migratory species that are the subject of the agreement and (ii) a portion of the allowable catch that reflects the traditional participation by such vessels in the fishery;

(D) effective enforcement of conservation and management measures and access arrangements throughout the area of jurisdiction; and

(E) sufficient and dependable funding to implement the provisions of the agreement, based on reasonable assessments of the benefits derived by participating nations.

(2) ACCESS NEGOTIATIONS.—The Secretary of State, in cooperation with the Secretary, shall initiate negotiations with respect to obtaining access for vessels of the United States fishing for tuna species within the exclusive economic zones of other nations on reasonable terms and conditions.

(3) REPORTS.—The Secretary of State shall report to the Congress—

(A) within 12 months after the date of enactment of this subsection, on the results of the evaluation required under paragraph (1), together with recommendations for addressing any inadequacies identified; and

(B) within six months after such date of enactment, on the results of the access negotiations required under paragraph (2).

(4) NEGOTIATION.—The Secretary of State, in consultation with the Secretary, shall undertake such negotiations with respect to international fishery agreements on highly migratory species as are necessary to correct inadequacies identified as a result of the evaluation conducted under paragraph (1).

(5) SOUTH PACIFIC TUNA TREATY.—It is the sense of the Congress that the United States Government shall, at the earliest opportunity, begin negotiations for the purpose of extending the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America, signed at Port Moresby, Papua New Guinea, April 2, 1987, and it[s] Annexes, Schedules, and implementing agreements for an additional term of 10 years on terms and conditions at least as favorable to vessels of the United States and the United States Government.

99-659

(f) NONRECOGNITION.—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to an exclusive economic zone (or the equivalent) beyond such nation's territorial sea, to the extent that such sea is recognized by the United States, if such nation—

(1) fails to consider and take into account traditional fishing activity of fishing vessels of the United States;

(2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or

(3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

102-251

(g) FISHERY AGREEMENT WITH UNION OF SOVIET SOCIALIST REPUBLICS.—

(1) The Secretary of State, in consultation with the Secretary, is authorized to negotiate and conclude a fishery agreement with Russia of a duration of no more than 3 years, pursuant to which—

(A) Russia will give United States fishing vessels the opportunity to conduct traditional fisheries within the waters claimed by the United States prior to the conclusion of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, west of the maritime boundary, including the western special area described in Article 3(2) of the Agreement;

(B) the United States will give fishing vessels of Russia the opportunity to conduct traditional fisheries within waters claimed by the Union of Soviet Socialist Republics prior to the conclusion of the Agreement referred to in subparagraph (A), east of the maritime boundary, including the eastern special areas described in Article 3(1) of the Agreement;

(C) catch data shall be made available to the government of the country exercising fisheries jurisdiction over the waters in which the catch occurred; and

(D) each country shall have the right to place observers on board vessels of the other country and to board and inspect such vessels.

(2) Vessels operating under a fishery agreement negotiated and concluded pursuant to paragraph (1) shall be subject to regulations and permit requirements of the country in whose waters the fisheries are conducted only to the extent such regulations and permit requirements are specified in that agreement.

(3) The Secretary of Commerce may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the provisions of any fishery agreement negotiated and concluded pursuant to paragraph (1).

104-297

(h) BYCATCH REDUCTION AGREEMENTS.—

(1) The Secretary of State, in cooperation with the Secretary, shall seek to secure an international agreement to establish standards and measures for bycatch reduction that are comparable to the standards and measures applicable to United States fishermen for such purposes in any fishery regulated pursuant to this Act for which the Secretary, in consultation with the Secretary of State, determines that such an international agreement is necessary and appropriate.

(2) An international agreement negotiated under this subsection shall be—

(A) consistent with the policies and purposes of this Act; and

(B) subject to approval by Congress under section 203.

(3) Not later than January 1, 1997, and annually thereafter, the Secretary, in consultation with the Secretary of State, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report describing actions taken under this subsection.

SEC. 203. CONGRESSIONAL OVERSIGHT OF INTERNATIONAL FISHERY AGREEMENTS

16 U.S.C. 1823

104-297

(a) IN GENERAL.—No governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement shall become effective with respect to the United States before the close of the first 120 calendar days (excluding any days in a period for which the Congress is adjourned sine die) after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement, bycatch reduction agreement, or Pacific Insular Area fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

(b) REFERRAL TO COMMITTEES.—Any document described in subsection (a) shall be immediately referred in the House of Representatives to the Committee on Merchant Marine and Fisheries, and in the Senate to the Committees on Commerce and Foreign Relations.

§ 5501. — Purpose.

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[CITE: 16USC5501]

TITLE 16--CONSERVATION

CHAPTER 75--HIGH SEAS FISHING COMPLIANCE Sec. 5501. Purpose

It is the purpose of this chapter--

(1) to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993; and

(2) to establish a system of permitting, reporting, and regulation for vessels of the United States fishing on the high seas.

(Pub. L. 104-43, title I, Sec. 102, Nov. 3, 1995, 109 Stat. 367.) References in

Text

This chapter, referred to in text, was in the original ``this Act '', and was translated as reading ``this title '', meaning title I of Pub. L. 104-43, to reflect the probable intent of Congress.

Effective Date

Section 111 of title I of Pub. L. 104-43 provided that: ``This title [enacting this chapter] shall take effect 120 days after the date of enactment of this Act [Nov. 3, 1995] .''

Short Title

Section 1 of Pub. L. 104-43 provided that: ``This Act [enacting this chapter, chapters 76 (Sec. 5601 et seq.) and 77 (Sec. 5701 et seq.) of this title, sections 971j, 971k, and 1826d to 1826g of this title, and sections 1980a and 1980b of Title 22, Foreign Relations and Intercourse, amending sections 971, 971b, 971c to 971e, 971h, 971i, 973g, 1383a, and 5002 of this title and section 1977 of Title 22, enacting provisions set out as notes under this section, sections 971, 971c, 1383a, 1801, 1821, 1823, 1826d, 5601, and 5701 of this title, and section 1980a of Title 22, and amending provisions set out as a note under section 1823 of this title] may be cited as the `Fisheries Act of 1995'. ''

Section 101 of title I of Pub. L. 104-43 provided that: ``This title [enacting this chapter] may be cited as the `High Seas Fishing Compliance Act of 1995'. ''

human consumption for other than reason of size. This requirement shall not apply to the last set of a trip if the available well capacity is insufficient to accommodate the entire fish catch brought on board.

(2) All purse seine vessels must release all sharks, billfishes, rays, mahimahi (*dorado*), and other non-tuna fish species, except those being retained for consumption aboard the vessel, as soon as practicable after being identified on board the vessel during the brailing operation.

(3) All purse seine vessels must apply special sea turtle handling and release procedures, as follows:

(i) Whenever a sea turtle is sighted in the net, a speedboat shall be stationed close to the point where the net is lifted out of the water to assist in release of the turtle;

(ii) If a turtle is entangled in the net, net roll shall stop as soon as the turtle comes out of the water and shall not resume until the turtle has been disentangled and released;

(iii) If, in spite of the measures taken under paragraphs (e)(3)(i) and (ii) of this section, a turtle is accidentally brought onboard the vessel alive and active, the vessel's engine shall be disengaged and the turtle shall be released as quickly as practicable;

(iv) If a turtle brought on board under paragraph (e)(3)(iii) of this section is alive but comatose or inactive, the resuscitation procedures described in § 223.206(d)(1)(i)(B) of this title shall be used before release of the turtle.

[64 FR 44431, Aug. 16, 1999, as amended at 66 FR 49320, Sept. 27, 2001. Redesignated at 69 FR 67277, Nov. 17, 2004]

Subpart D—South Pacific Tuna Fisheries

AUTHORITY: 16 U.S.C. 973–973r.

§ 300.30 Purpose and scope.

This subpart implements the South Pacific Tuna Act of 1988 (Act) and the Treaty on Fisheries Between the Governments of Certain Pacific Island States and the Government of the United States of America (Treaty) and applies to persons and vessels subject to the jurisdiction of the United States.

§ 300.31 Definitions.

In addition to the terms defined in § 300.2, in the Act, and in the Treaty, and unless the context requires otherwise, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the Treaty, the definition in this section shall apply.

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.

Applicable national law means any of the laws of Pacific Island Parties in the following table and any regulations or other instruments having the force of law implemented pursuant to these laws:

Pacific Island Party	Laws
AUSTRALIA	Antarctic Marine Living Resources Conservation Act, 1981. Fisheries Management Act, 1991. Fisheries Administration Act, 1991. Statutory Fishing Rights Charge Act, 1991. Fisheries Legislation (Consequential Provisions) Act, 1991. Foreign Fishing Licences Levy Act, 1991. Fishing Levy Act, 1991. Fisheries Agreements (Payments) Act, 1991. Torres Strait Fisheries Act, 1984. Whale Protection Act, 1980.
COOK ISLANDS	Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979. Territorial Sea and Exclusive Economic Zone Act, 1977. Marine Resources Act, 1989.
FEDERATED STATES OF MICRONESIA	Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2–28, 2–31, 3–9, 3–10, 3–34, and 3–80.

FISHERIES ACT OF 1995

An Act

Public Law 104-43
104th Congress

To amend the Fishermen's Protective Act. <<NOTE: Nov. 3, 1995 - [H.R.716] >>

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, <<NOTE: Fisheries Act of 1995. Conservation.>>

SECTION 1. <<NOTE: 16 USC 5501 note.>> SHORT TITLE.

This Act may be cited as the ``Fisheries Act of 1995 ''.

TITLE I <<NOTE: High Seas Fishing Compliance Act of 1995.>> --HIGH SEAS FISHING COMPLIANCE

SEC. 101. <<NOTE: 16 USC 5501 note.>> SHORT TITLE.

This title may be cited as the ``High Seas Fishing Compliance Act of 1995''.

SEC. 102. <<NOTE: 16 USC 5501.>> PURPOSE.

It is the purpose of this Act--

(1) to implement the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993; and

(2) to establish a system of permitting, reporting, and regulation for vessels of the United States fishing on the high seas.

SEC. 103. <<NOTE: 16 USC 5502.>> DEFINITIONS.
As used in this Act--

(1) The term ``Agreement '' means the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, adopted by the Conference of the Food and Agriculture Organization of the United Nations on November 24, 1993.

(2) The term ``FAO '' means the Food and Agriculture Organization of the United Nations.

(3) The term ``high seas '' means the waters beyond the territorial sea or exclusive economic zone (or the equivalent) of any nation, to the extent that such territorial sea or exclusive economic zone (or the equivalent) is recognized by the United States.

(4) The term ``high seas fishing vessel '' means any vessel of the United States used or intended for use--

(A) on the high seas;

(B) for the purpose of the commercial exploitation of living marine resources; and

(C) as a harvesting vessel, as a mother ship, or as any other support vessel directly engaged in a fishing operation.

(5) The term ``international conservation and management measures '' means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law, as reflected in the 1982 United Nations Convention on the Law of the Sea, and that are recognized by the United States. Such measures may be adopted by global, regional, or sub-regional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements.

(6) The term ``length '' means--

(A) for any high seas fishing vessel built after July 18, 1982, 96 percent of the total length on a waterline at 85 percent of the least molded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that is greater, except that in ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline; and

(B) for any high seas fishing vessel built before July 18, 1982, registered length as entered on the vessel's documentation.

(7) 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.

(8) The term ``Secretary '' means the Secretary of Commerce.

(9) The term ``vessel of the United States '' means--

(A) a vessel documented under chapter 121 of title 46, United States Code, or numbered in accordance with chapter 123 of title 46, United States Code;

(B) a vessel owned in whole or part by--

(i) the United States or a territory, commonwealth, or possession of the United States;

(ii) a State or political subdivision thereof;

(iii) a citizen or national of the United States; or

(iv) a corporation created under the laws of the United States or any State, the District of Columbia, or any territory, commonwealth, or possession of the United States; unless the vessel has been granted the nationality of a foreign nation in accordance with article 92 of the 1982 United Nations Convention on the Law of the Sea and a claim of nationality or registry for the vessel is made by the master or individual in charge at the time of the enforcement action by an officer or employee of the United States

authorized to enforce applicable provisions of the United States law; and

(C) a vessel that was once documented under the laws of the United States and, in violation of the laws of the United States, was either sold to a person not a citizen of the United States or placed under foreign registry or a foreign flag, whether or not the vessel has been granted the nationality of a foreign nation.

(10) The terms ``vessel subject to the jurisdiction of the United States '' and ``vessel without nationality '' have the same meaning as in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. 1903 (c)) .

SEC. 104. <<NOTE: 16 USC 5503.>> PERMITTING.

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

(b) Eligibility.--

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

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

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

(2) The restriction in paragraph (1) does not apply if ownership of the vessel has changed since the vessel undermined the effectiveness of international conservation and 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 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. <<NOTE: Regulations.>> The Secretary shall promulgate regulations concerning conditions under which information submitted under this paragraph may be released.

(e) Fees.-- <<NOTE: Regulations.>>

(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.

SEC. 105. <<NOTE: 16 USC 5504.>> RESPONSIBILITIES OF THE SECRETARY.

(a) Record.--The Secretary shall maintain an automated file or record of high seas fishing vessels issued permits under section 104, including all information submitted under section 104(c)(2).

(b) Information To FAO.--The Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall--

(1) make available to FAO information contained in the record maintained under subsection (a);

(2) promptly notify FAO of changes in such information;

(3) promptly notify FAO of additions to or deletions from the record, and the reason for any deletion;

(4) convey to FAO information relating to any permit granted under section 104(b)(3), including the vessel's identity, owner or operator, and factors relevant to the Secretary's determination to issue the permit;

(5) report promptly to FAO all relevant information regarding any activities of high seas fishing vessels that undermine the effectiveness of international conservation and management measures, including the identity of the vessels and any sanctions imposed; and

(6) provide the FAO a summary of evidence regarding any activities of foreign vessels that undermine the effectiveness of international conservation and management measures.

(c) Information to Flag Nations.--If the Secretary, in cooperation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, has reasonable grounds to believe that a foreign vessel has engaged in activities undermining the effectiveness of international conservation and management measures, the Secretary shall--

(1) provide to the flag nation information, including appropriate evidentiary material, relating to those activities; and

(2) when such foreign vessel is voluntarily in a United States port, promptly notify the flag nation and, if requested by the flag nation, make arrangements to undertake such lawful investigatory measures as may be considered necessary to establish whether the vessel has been used contrary to the provisions of the Agreement.

(d) Regulations.--The Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to carry out the purposes of the Agreement and this title. The Secretary shall coordinate such regulations with any other entities regulating high seas fishing vessels, in order to minimize duplication of permit application and reporting requirements. To the extent practicable, such regulations shall also be consistent with regulations implementing fishery management plans under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(e) <<NOTE: Federal Register, publication.>> Notice of International Conservation and Management Measures.--The Secretary, in consultation with the Secretary of State, shall publish in the Federal Register, from time to time, a notice listing international conservation and management measures recognized by the United States.

SEC. 106. <<NOTE: 16 USC 5505.>> UNLAWFUL ACTIVITIES.

It is unlawful for any person subject to the jurisdiction of the United States--

(1) to use a high seas fishing vessel on the high seas in contravention of international conservation and management measures described in section 105(e);

(2) to use a high seas fishing vessel on the high seas, unless the vessel has on board a valid permit issued under section 104;

(3) to use a high seas fishing vessel in violation of the conditions or restrictions of a permit issued under section 104;

(4) to falsify any information required to be reported, communicated, or recorded pursuant to this title or any regulation issued under this title, or to fail to submit in a timely fashion any required information, or to fail to report to the Secretary immediately any change in circumstances that has the effect of rendering any such information false, incomplete, or misleading;

(5) to refuse to permit an authorized officer to board a high seas fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this title or any regulation issued under this title;

(6) to forcibly assault, resist, oppose, impede, intimidate, or interfere with an authorized officer in the conduct of any search or inspection described in paragraph (5);

(7) to resist a lawful arrest or detention 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;

(9) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any living marine resource taken or retained in violation of this title or any regulation or permit issued under this title; or

(10) to violate any provision of this title or any regulation or permit issued under this title.

SEC. 107. <<NOTE: 16 USC 5506.>> ENFORCEMENT PROVISIONS.

(a) Duties of Secretaries.--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 by agreement utilize, on a reimbursable basis or otherwise, the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, or of any State agency, in the performance of such duties. Such Secretaries shall, and the head of any Federal or State agency that has entered into an agreement with either such Secretary under this section may (if the agreement so provides), authorize officers to enforce the provisions of this title or any regulation or permit issued under this title.

(b) District Court Jurisdiction.--The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this title. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii.

(c) Powers of Enforcement Officers.--

(1) Any officer who is authorized under subsection (a) to enforce the provisions of this title may--

(A) with or without a warrant or other process--

(i) arrest any person, if the officer has reasonable cause to believe that such person has committed an act prohibited by paragraph (6), (7), (8), or (9) of section 106;

(ii) board, and search or inspect, any high seas fishing vessel;

(iii) seize any high seas 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 this title or any regulation or permit issued under this title;

(iv) seize any living marine resource (wherever found) taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 106;

(v) seize any other evidence related to any violation of any provision of this title or any regulation or permit issued under this title;

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

(C) exercise any other lawful authority.

(2) Subject to the direction of the Secretary, a person charged with law enforcement responsibilities by the Secretary who is performing a duty related to enforcement of a law regarding fisheries or other marine resources may make an arrest without a warrant for an offense against the United States committed in his presence, or for a felony cognizable under the laws of the United States, if he has reasonable grounds to
believe that the person to be arrested has committed or is committing a felony.

(d) Issuance of Citations.--If any authorized officer finds that a high seas fishing vessel is operating or has been operated in violation of any provision of this title, such officer may issue a citation to the owner or operator of such vessel in lieu of proceeding under subsection (c). If a permit has been issued pursuant to this title 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. <<NOTE: Records.>> The Secretary shall maintain a record of all citations issued pursuant to this subsection.

(e) Liability for Costs.--Any person assessed a civil penalty for, or convicted of, any violation of this Act shall be liable for the cost incurred in storage, care, and maintenance of any living marine resource or other property seized in connection with the violation.

SEC. 108. <<NOTE: 16 USC 5507.>> CIVIL PENALTIES AND PERMIT SANCTIONS.

(a) Civil Penalties.--

(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 106 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 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, and such

other matters as justice may require.

(2) The Secretary 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.

(b) Permit Sanctions.--

(1) In any case in which--

(A) a vessel of the United States has been used in the commission of an act prohibited under section 106;

(B) the owner or operator of a vessel or any other person who has been issued or has applied for a permit under section 104 has acted in violation of section 106; or

(C) any amount in settlement of a civil forfeiture imposed on a high seas fishing vessel or other property, or any civil penalty or criminal fine imposed on a high seas fishing vessel or on an owner or operator of such a vessel or on any other person who has been issued or has applied for a permit under any fishery resource statute enforced by the Secretary, has not been paid and is overdue, the Secretary may--

(i) revoke any permit issued to or applied for by such vessel or person under this title, with or without prejudice to the issuance of subsequent permits;

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

(iii) deny such permit; or

(iv) impose additional conditions and restrictions on such permit.

(2) 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.

(3) Transfer of ownership of a high seas fishing vessel, 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, 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 at the time of the transfer. The Secretary may waive or compromise a sanction in the case of a transfer pursuant to court order.

(4) In the case of any permit that is suspended under this subsection for nonpayment of a civil penalty or criminal fine, the Secretary shall reinstate the permit upon payment of the penalty or fine and interest thereon at the prevailing rate.

(5) No sanctions 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.

(c) Hearing.--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 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 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 or to appear and produce documents before the Secretary, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Judicial Review.--Any person against whom a civil penalty is assessed under subsection (a) or against whose vessel a permit sanction is imposed under subsection (b) (other than a permit suspension for nonpayment of penalty or fine) may obtain review thereof in the United States district court for the appropriate district by filing a complaint against the Secretary in such court within 30 days from the date of such penalty or sanction. The Secretary shall promptly file in such court a certified copy of the record upon which such penalty or sanction was 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.

(e) Collection.--

(1) 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 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.

(2) A high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used in the commission of an act prohibited by section 106 shall be liable in rem for any civil penalty assessed for such violation under subsection (a) 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.

SEC. 109. <<NOTE: 16 USC 5508.>> CRIMINAL OFFENSES.

(a) Offenses.--A person is guilty of an offense if the person commits any act prohibited by paragraph (6), (7), (8), or (9) of section 106.

(b) Punishment.--Any offense described in subsection (a) is a class A misdemeanor punishable by a fine under title 18, United States Code, or imprisonment for not more than one year, 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 authorized officer, or places any 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.

SEC. 110. <<NOTE: 16 USC 5509.>> FORFEITURES.

(a) In General.--Any high seas fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any living marine resources (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 prohibited by section 106 (other than an act for which the issuance of a citation under section 107 is a sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such living marine resources (or the fair market value thereof) shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) Jurisdiction of District Courts.--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 subsection (a) and any action provided for under subsection (d).

(c) Judgment.--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--

(1) the seizure, forfeiture, and condemnation of property for violation of the customs law;

(2) the disposition of such property or the proceeds from the sale thereof; and

(3) 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.

(d) Procedure.--

(1) Any officer authorized to serve any process in rem that is issued by a court under section 107(b) shall--

(A) stay the execution of such process; or

(B) discharge any living marine resources 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.

(2) Any living marine resources seized pursuant to this title may be sold, subject to the approval 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.

(e) Rebuttable Presumption.--For purposes of this section, all living marine resources found on board a high seas fishing vessel and which are seized in connection with an act prohibited by section 106 are presumed to have been taken or retained in violation of this title, but the presumption can be rebutted by an appropriate showing of evidence to the contrary.

SEC. 111. <<NOTE: 16 USC 5501 note.>> EFFECTIVE DATE.

This title shall take effect 120 days after the date of enactment of this Act.

TITLE II <<NOTE: Northwest Atlantic Fisheries Convention Act of 1995.>> --IMPLEMENTATION OF CONVENTION ON FUTURE MULTILATERAL COOPERATION IN THE NORTHWEST ATLANTIC FISHERIES

SEC. 201. <<NOTE: 16 USC 5601 note.>> SHORT TITLE.

This title may be cited as the ``Northwest Atlantic Fisheries Convention Act of 1995 ''.

SEC. 202. <<NOTE: 16 USC 5601.>> REPRESENTATION OF UNITED STATES UNDER CONVENTION.

(a) Commissioners.--

(1) Appointments, generally.--The Secretary shall appoint not more than 3 individuals to serve as the representatives of the United States on the General Council and the Fisheries Commission, who shall each--

(A) be known as a ``United States Commissioner to

the Northwest Atlantic Fisheries Organization ''; and

(B) serve at the pleasure of the Secretary.

(2) Requirements for appointments.--

(A) The Secretary shall ensure that of the individuals serving as Commissioners--

(i) at least 1 is appointed from among representatives of the commercial fishing industry;

(ii) 1 (but no more than 1) is an official of the Government; and

(iii)1, other than the individual appointed under clause (ii), is a voting member of the New England Fishery Management Council.

(B) The Secretary may not appoint as a Commissioner an individual unless the individual is knowledgeable and experienced concerning the fishery resources to which the Convention applies.

(3) Terms.--

(A) The term of an individual appointed as a Commissioner--

(i) shall be specified by the Secretary at the time of appointment; and

(ii) may not exceed 4 years.

(B) An individual who is not a Government official may not serve more than 2 consecutive terms as a Commissioner.

(b) Alternate Commissioners.--

(1) Appointment.--The Secretary may, for any anticipated absence of a duly appointed Commissioner at a meeting of the General Council or the Fisheries Commission, designate an individual to serve as an Alternate Commissioner.

(2) Functions.--An Alternate Commissioner may exercise all powers and perform all duties of the Commissioner for whom the Alternate Commissioner is designated, at any meeting of the General Council or the Fisheries Commission for which the Alternate Commissioner is designated.

(c) Representatives.--

(1) Appointment.--The Secretary shall appoint not more than 3 individuals to serve as the representatives of the United States on the Scientific Council, who shall each be known as a ``United States Representative to the Northwest Atlantic Fisheries Organization Scientific Council ''.

(2) Eligibility for appointment.--

(A) The Secretary may not appoint an individual as a Representative unless the individual is knowledgeable and experienced concerning the scientific issues dealt with by the Scientific Council.

(B) The Secretary shall appoint as a Representative at least 1 individual who is an official of the Government.

(3) Term.--An individual appointed as a Representative--

(A) shall serve for a term of not to exceed 4 years, as specified by the Secretary at the time of appointment;

(B) may be reappointed; and

(C) shall serve at the pleasure of the Secretary.

(d) Alternate Representatives.--

(1) Appointment.--The Secretary may, for any anticipated absence of a duly appointed Representative at a meeting of the Scientific Council, designate an individual to serve as an Alternate Representative.

(2) Functions.--An Alternate Representative may exercise all powers and perform all duties of the Representative for whom the Alternate Representative is designated, at any meeting of the Scientific Council for which the Alternate Representative is designated.

(e) Experts and Advisers.--The Commissioners, Alternate Commissioners, Representatives, and Alternate Representatives may be accompanied at meetings of the Organization by experts and advisers.

(f) Coordination and Consultation.--

(1) In general.--In carrying out their functions under the Convention, Commissioners, Alternate Commissioners, Representatives, and Alternate Representatives shall--

(A) coordinate with the appropriate Regional Fishery Management Councils established by section 302 of the Magnuson Act (16 U.S.C. 1852); and

(B) consult with the committee established under section 208.

(2) Relationship to other law.--The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to coordination and consultations under this subsection.

SEC. 203. <<NOTE: 16 USC 5602.>> REQUESTS FOR SCIENTIFIC ADVICE.

(a) Restriction.--The Representatives may not make a request or specification described in subsection (b) (1) or (2), respectively, unless the Representatives have first--

(1) consulted with the appropriate Regional Fishery Management Councils; and

(2) received the consent of the Commissioners for that action.

(b) Requests and Terms of Reference Described.--The requests and specifications referred to

in subsection (a) are, respectively--

(1) any request, under Article VII(1) of the Convention, that the Scientific Council consider and report on a question pertaining to the scientific basis for the management and conservation of fishery resources in waters under the jurisdiction of the United States within the Convention Area; and

(2) any specification, under Article VIII(2) of the Convention, of the terms of reference for the consideration of a question referred to the Scientific Council pursuant to Article VII(1) of the Convention.

SEC. 204. <<NOTE: 16 USC 5603.>> AUTHORITIES OF SECRETARY OF STATE WITH RESPECT TO CONVENTION.

The Secretary of State may, on behalf of the Government of the United States--

(1) receive and transmit reports, requests, recommendations, proposals, and other communications of and to the Organization and its subsidiary organs;

(2) object, or withdraw an objection, to the proposal of the Fisheries Commission;

(3) give or withdraw notice of intent not to be bound by a measure of the Fisheries Commission;

(4) object or withdraw an objection to an amendment to the Convention; and

(5) act upon, or refer to any other appropriate authority, any other communication referred to in paragraph (1).

SEC. 205. <<NOTE: 16 USC 5604.>> INTERAGENCY COOPERATION.

(a) Authorities of Secretary.--In carrying out the provisions of the Convention and this title, the Secretary may arrange for cooperation with other agencies of the United States, the States, the New England and the Mid-Atlantic Fishery Management Councils, and private institutions and organizations.

(b) Other Agencies.--The head of any Federal agency may--

(1) cooperate in the conduct of scientific and other programs, and furnish facilities and personnel, for the purposes of assisting the Organization in carrying out its duties under the Convention; and

(2) accept reimbursement from the Organization for providing such services, facilities, and personnel.

SEC. 206. <<NOTE: 16 USC 5605.>> RULEMAKING.

The Secretary shall promulgate regulations as may be necessary to carry out the purposes and objectives of the Convention and this title. 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.

SEC. 207. <<NOTE: 16 USC 5606.>> PROHIBITED ACTS AND PENALTIES.

(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 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 described in paragraph (2);

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

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

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

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

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

(d) Civil Forfeitures.--

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

(2) Disposal <<NOTE: Regulations.>> 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 sections 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.

SEC. 208. <<NOTE: 16 USC 5607.>> CONSULTATIVE COMMITTEE.

(a) Establishment.--The Secretary of State and the Secretary, shall jointly establish a consultative committee to advise the Secretaries on issues related to the Convention.

(b) Membership.--

(1) The membership of the Committee shall include representatives from the New England and Mid-Atlantic Fishery Management Councils, the States represented on those Councils, the Atlantic States Marine Fisheries Commission, the fishing industry, the seafood processing industry, and others knowledgeable and experienced in the conservation and management of fisheries in the Northwest Atlantic Ocean.

(2) Terms and Reappointment.--Each member of the consultative committee shall serve for a term of two years and shall be eligible for reappointment.

(c) Duties of the Committee.--Members of the consultative committee may attend--

(1) all public meetings of the General Council or the Fisheries Commission;
(2) any other meetings to which they are invited by the General Council or the Fisheries Commission; and
(3) all nonexecutive meetings of the United States Commissioners.

(d) Relationship to Other Law.--The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the consultative committee established under this section.

SEC. 209. <<NOTE: 16 USC 5608.>> ADMINISTRATIVE MATTERS.

(a) Prohibition on Compensation.--A person shall not receive any compensation from the Government by reason of any service of the person as--

(1) a Commissioner, Alternate Commissioner, Representative, or Alternative Representative;
(2) an expert or adviser authorized under section 202(e); or
(3) a member of the consultative committee established by section 208.

(b) Travel and Expenses.--The Secretary of State shall, subject to the availability of appropriations, pay all necessary travel and other expenses of persons described in subsection (a)(1) and of not more than six experts and advisers authorized under section 202(e) with respect to their actual performance of their official duties pursuant to this title, in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code.

(c) Status as Federal Employees.--A person shall not be considered to be a Federal employee by reason of any service of the person in a capacity described in subsection (a), except for purposes of injury compensation and tort claims liability under chapter 81 of title 5, United States Code, and chapter 17 of title 28, United States Code, respectively.

SEC. 210. <<NOTE: 16 USC 5609.>> DEFINITIONS.

In this title the following definitions apply:

(1) Authorized enforcement officer.--The term ``authorized enforcement officer '' means a person authorized to enforce this title, any regulation issued under this title, or any measure that is legally binding on the United States under the Convention.

(2) Commissioner.--The term ``Commissioner '' means a United States Commissioner to the Northwest Atlantic Fisheries Organization appointed under section 202(a).

(3) Convention.--The term ``Convention '' means the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, done at Ottawa on October 24, 1978.

(4) Fisheries commission.--The term ``Fisheries Commission '' means the Fisheries Commission provided for by Articles II, XI, XII, XIII, and XIV of the Convention.

(5) General council.--The term ``General Council '' means the General Council provided for by Article II, III, IV, and V of the Convention.

(6) Magnuson act.--The term ``Magnuson Act '' means the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

(7) Organization.--The term ``Organization '' means the Northwest Atlantic Fisheries Organization provided for by Article II of the Convention.

(8) Person.--The term ``person '' means any individual (whether or not a citizen or national of the United States), and any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State).

(9) Representative.--The term ``Representative '' means a United States Representative to the Northwest Atlantic Fisheries Scientific Council appointed under section 202(c).

(10) Scientific council.--The term ``Scientific Council '' means the Scientific Council provided for by Articles II, VI, VII, VIII, IX, and X of the Convention.

(11) Secretary.--The term ``Secretary '' means the Secretary of Commerce.

SEC. 211. <<NOTE: 16 USC 5610.>> AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title, including use for payment as the United States contribution to the Organization as provided in Article XVI of the Convention, $500,000 for each of the fiscal years 1995, 1996, 1997, and 1998.

TITLE III <<NOTE: Atlantic Tunas Convention Authorization Act of 1995.>> --ATLANTIC TUNAS CONVENTION ACT

SEC. 301. <<NOTE: 16 USC 971 note.>> SHORT TITLE.

This title may be cited as the ``Atlantic Tunas Convention Authorization Act of 1995 ''.

SEC. 302. RESEARCH AND MONITORING ACTIVITIES.

(a) Report to Congress.--The Secretary of Commerce shall, within 90 days after the date of enactment of this Act, submit a report to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives--

(1) identifying current governmental and nongovernmental research and monitoring activities on Atlantic bluefin tuna and other highly migratory species;

(2) describing the personnel and budgetary resources allocated to such activities; and

(3) explaining how each activity contributes to the conservation and management of Atlantic bluefin tuna and other highly migratory species.

(b) Research and Monitoring Program.--Section 3 of the Act of September 4, 1980 (16 U.S.C. 971i) is amended--

(1) by amending the section heading to read as follows:

``SEC. 3. RESEARCH ON ATLANTIC HIGHLY MIGRATORY SPECIES. '';

(2) by striking the last sentence;

(3) by inserting ``(a) Biennial Report on Bluefin Tuna.-- '' before ``The Secretary of Commerce shall ''; and

(4) by adding at the end the following:

``(b) Highly Migratory Species Research and Monitoring.--

``(1) Within 6 months after the date of enactment of the Atlantic Tunas Convention Authorization Act of 1995, the Secretary of Commerce, in cooperation with the advisory committee established under section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) and in consultation with the United States Commissioners on the International Commission for the Conservation of Atlantic Tunas (referred to elsewhere in this section as the `Commission') and the Secretary of State, shall develop and implement a comprehensive research and monitoring program to support the conservation and management of Atlantic bluefin tuna and other highly migratory species that shall--

``(A) identify and define the range of stocks of highly migratory species in the Atlantic Ocean, including Atlantic bluefin tuna; and

``(B) provide for appropriate participation by nations which are members of the Commission.

``(2) The program shall provide for, but not be limited to--

``(A) statistically designed cooperative tagging studies;

``(B) genetic and biochemical stock analyses;

``(C) population censuses carried out through aerial surveys of fishing grounds and known migration areas;

``(D) adequate observer coverage and port sampling of commercial and recreational fishing activity;

``(E) collection of comparable real-time data on commercial and recreational catches and landings through the use of permits, logbooks, landing reports for charter operations and fishing tournaments, and programs to provide reliable reporting of the catch by private anglers;

``(F) studies of the life history parameters of Atlantic bluefin tuna and other highly migratory species;

``(G) integration of data from all sources and the preparation of data bases to support management decisions; and

``(H) other research as necessary.

``(3) In developing a program under this section, the Secretary shall--

``(A) ensure that personnel and resources of each regional research center shall have substantial participation in the stock assessments and monitoring of highly migratory species that occur in the region;

``(B) provide for comparable monitoring of all United States fishermen to which the Atlantic Tunas Convention Act applies with respect to effort and species composition of catch and discards;

``(C) <<NOTE: Intergovernmental relations.>> consult with relevant Federal and State agencies, scientific and technical experts, commercial and recreational fishermen, and other interested persons, public and private, and shall publish <<NOTE: Federal Register, publication.>> a proposed plan in the

Federal Register for the purpose of receiving public comment on the plan; and
``(D) through the Secretary of State, encourage other member nations to adopt a similar program. ''.

SEC. 303. DEFINITIONS.

Section 2 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971) is amended--
(1) by designating paragraphs (3) through (10) as (4) through (11), respectively, and inserting after paragraph (2) the following:
``(3) The term `conservation recommendation' means any recommendation of the Commission made pursuant to Article VIII of the Convention and acted upon favorably by the Secretary of State under section 5(a) of this Act. '';
(2) by striking paragraph (5), as redesignated, and inserting the following:
``(4) The term `exclusive economic zone' means an exclusive economic zone as defined in section 3 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1802). ''; and
(3) <<NOTE: 16 USC 971c, 971d.>> by striking ``fisheries zone '' wherever it appears in the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) and inserting ``exclusive economic zone ''.

SEC. 304. ADVISORY COMMITTEE PROCEDURES.

Section 4 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971b) is amended--
(1) by inserting ``(a) '' before ``There''; and
(2) by adding at the end the following:

``(b)(1) A majority of the members of the advisory committee shall constitute a quorum, but one or more such members designated by the advisory committee may hold meetings to provide for public participation and to discuss measures relating to the United States implementation of Commission recommendations.
``(2) The advisory committee shall elect a Chairman for a 2-year term from among its members.
``(3) The advisory committee shall meet at appropriate times and places at least twice a year, at the call of the Chairman or upon the request of the majority of its voting members, the United States Commissioners, the Secretary, or the Secretary of State.
Meetings <<NOTE: Public information.>> 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.

``(4)(A) The Secretary shall provide to the advisory committee in a timely manner such administrative and technical support services as are necessary for the effective functioning of the committee.
``(B) The Secretary and the Secretary of State shall furnish the advisory committee with relevant information concerning fisheries and international fishery agreements.
``(5) The advisory committee shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.), and the Convention.
The <<NOTE: Publication. Public information.>> advisory committee shall publish and make available to the public a statement of its organization, practices, and procedures.

``(6) The advisory committee shall, to the maximum extent practicable, consist of an equitable balance among the various groups concerned with the fisheries covered by the Convention and shall not be subject to the Federal Advisory Committee Act (5 U.S.C. App.). ''.

SEC. 305. REGULATIONS AND ENFORCEMENT OF CONVENTION.

Section 6(c) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)) is amended--
(1) by inserting ``and other measures '' after ``regulations '' in the section caption;
(2) by inserting ``or fishing mortality level '' after ``quota of fish '' in the last sentence of paragraph (3); and
(3) by inserting the following after paragraph (5): ``(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) <<NOTE: Publication.>> publish a list of those Nations identified under subparagraph (A) .
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. ''.

SEC. 306. FINES AND PERMIT SANCTIONS.

Section 7(e) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(e)) <<NOTE: 16 USC 971e.>> is amended to read as follows:

``(e) The civil penalty and permit sanctions of section 308 of the Magnuson 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. ''.

SEC. 307. AUTHORIZATION OF APPROPRIATIONS.

Section 10 of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971h) is amended to read as follows:

``AUTHORIZATION OF APPROPRIATIONS

``Sec. 10. There are authorized to be appropriated to carry out this Act, including use for payment of the United States share of the joint expenses of the Commission as provided in Article X of the Convention, the following sums:

``(1) For fiscal year 1995, $4,103,000, of which $50,000 are authorized in the aggregate for the advisory committee established under section 4 and the species working groups established under section 4A, and $2,890,000 are authorized for research activities under this Act and the Act of September 4, 1980 (16 U.S.C. 971i).

``(2) For fiscal year 1996, $5,453,000, of which $50,000 are authorized in the aggregate for such advisory committee and such working groups, and $4,240,000 are authorized for such research activities.

``(3) For fiscal year 1997, $5,465,000 of which $62,000 are authorized in the aggregate for such advisory committee and such working groups, and $4,240,000 are authorized for such research activities.

``(4) For fiscal year 1998, $5,465,000 of which $75,000 are authorized in the aggregate for such advisory committee and such working groups, and $4,240,000 are authorized for such research activities. ''.

SEC. 308. REPORT AND SAVINGS CLAUSE.

The Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 et seq.) is amended by adding at the end thereof the following:

``Sec. 11. <<NOTE: 16 USC 971j.>> Annual report

``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.

``Sec. 12. <<NOTE: 16 USC 971k.>> Savings clause

``Nothing in this Act shall have the effect of diminishing the rights and obligations of any Nation under Article VIII(3) of the Convention. ''.

SEC. 309. MANAGEMENT OF ATLANTIC YELLOWFIN TUNA.

(a) <<NOTE: Publication.>> Not later than 90 days after the date of the enactment of this Act, the Secretary of Commerce in accordance with this section shall publish a preliminary determination of the level of the United States recreational and commercial catch of Atlantic

yellowfin tuna on an annual basis since 1980. <<NOTE: Federal Register, publication.>> The Secretary shall publish a preliminary determination in the Federal Register for comment for a period not to exceed 60 days. The Secretary shall publish a final determination not later than 140 days from the date of the enactment of this section.

(b) <<NOTE: 16 USC 971c note.>> Not later than July 1, 1996, the Secretary of Commerce shall implement the recommendations of the International Commission for the Conservation of Atlantic Tunas regarding yellowfin tuna made pursuant to Article VIII of the International Convention for the Conservation of Atlantic Tunas and acted upon favorably by the Secretary of State under section 5(a) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971c(a)).

<<NOTE: Reports.>> SEC. 310. STUDY OF BLUEFIN TUNA REGULATIONS.

Not later than 270 days after the date of enactment of this Act, the Secretary of Commerce shall submit to the Committee on Commerce, Science and Transportation of the Senate and to the Committee on Resources of the House of Representatives a report on the historic rationale, effectiveness, and biological and economic efficiency of existing bluefin tuna regulations for United States Atlantic fisheries.

Specifically, the biological rationale for each regional and category allocation, including directed and incidental categories, should be described in light of the average size, age, and maturity of bluefin tuna caught in each fishery and the effect of this harvest on stock rebuilding and sustainable yield. The report should examine the history and evaluate the level of wasteful discarding, and evaluate the effectiveness of non-quota regulations at constraining harvests within regions. Further, comments should be provided on levels of participation in specific fisheries in terms of vessels and trips, enforcement implications, and the importance of monitoring information provided by these allocations on the precision of the stock assessment estimates.

SEC. 311. SENSE OF THE CONGRESS WITH RESPECT TO ICCAT NEGOTIATIONS.

(a) Sharing of Conservation Burden.--It is the sense of the Congress that in future negotiations of the International Commission for the Conservation of Atlantic Tunas (hereafter in this section referred to as ``ICCAT ''), the Secretary of Commerce shall ensure that the conservation actions recommended by international commissions and implemented by the Secretary for United States commercial and recreational fishermen provide fair and equitable sharing of the conservation burden among all contracting harvesters in negotiations with those commissions.

(b) Enforcement Provisions.--It is further the sense of the Congress that, during 1995 ICCAT negotiations on swordfish and other Highly Migratory Species managed by ICCAT, the Congress encourages the United States Commissioners to add enforcement provisions similar to those applicable to bluefin tuna.

(c) Enhanced Monitoring.--It is further the sense of the Congress that the National Oceanic and Atmospheric Administration and the United States Customs Service should enhance monitoring activities to ascertain what specific stocks are being imported into the United States and the country of origin.

(d) Multilateral Enforcement Process.--It is further the sense of the Congress that the United States Commissioners should pursue as a priority the establishment and implementation prior to December 31, 1996, an effective multilateral process that will enable ICCAT nations to enforce the conservation recommendations of the Commission.

TITLE IV--FISHERMEN'S PROTECTIVE ACT SEC.

401. <<NOTE: 22 USC 1980a note.>> FINDINGS.

The Congress finds that--

(1) customary international law and the United Nations Convention on the Law of the Sea guarantee the right of passage, including innocent passage, to vessels through the waters commonly referred to as the ``Inside Passage '' off the Pacific Coast of Canada;

(2) in 1994 Canada required all commercial fishing vessels of the United States to pay 1,500 Canadian dollars to obtain a ``license which authorizes transit '' through the Inside Passage;

(3) this action was inconsistent with international law, including the United Nations Convention on the Law of the Sea, and, in particular, Article 26 of that Convention, which specifically prohibits such fees, and threatened the safety of United States commercial fishermen who sought to avoid the fee by traveling in less protected waters;

(4) the Fishermen's Protective Act of 1967 provides for the reimbursement of vessel owners who are forced to pay a license fee to secure the release of a vessel which has been seized, but does not permit reimbursement of a fee paid by the owner in advance in order to prevent a seizure;

(5) Canada required that the license fee be paid in person in 2 ports on the Pacific Coast of Canada, or in advance by mail;

(6) significant expense and delay was incurred by commercialfishing vessels of the United States that had to travel from the point of seizure back to one of those ports in order to pay the license fee required by Canada, and the costs of

that travel and delay cannot be reimbursed under the Fishermen's Protective Act;

(7) the Fishermen's Protective Act of 1967 should be amended to permit vessel owners to be reimbursed for fees required by a foreign government to be paid in advance in order to navigate in the waters of that foreign country if the United States considers that fee to be inconsistent with international law;

(8) the Secretary of State should seek to recover from Canada any amounts paid by the United States to reimburse vessel owners who paid the transit license fee;

(9) the United States should review its current policy with respect to anchorage by commercial fishing vessels of Canada in waters of the United States off Alaska, including waters in and near the Dixon Entrance, and should accord such vessels the same treatment that commercial fishing vessels of the United States are accorded for anchorage in the waters of Canada off British Columbia;

(10) the President should ensure that, consistent with international law, the United States Coast Guard has available adequate resources in the Pacific Northwest and Alaska to provide for the safety of United States citizens, the enforcement of United States law, and to protect the rights of the United States and keep the peace among vessels operating in disputed waters;

(11) the President should continue to review all agreements between the United States and Canada to identify other actions that may be taken to convince Canada that any reinstatement of the transit license fee would be against Canada's long-term interests, and should immediately implement any actions which the President deems appropriate if Canada reinstates the fee;

(12) the President should continue to convey to Canada in the strongest terms that the United States will not now, nor at any time in the future, tolerate any action by Canada which would impede or otherwise restrict the right of passage of vessels of the United States in a manner inconsistent with international law; and

(13) the United States should continue its efforts to seek expeditious agreement with Canada on appropriate fishery conservation and management measures that can be implemented through the Pacific Salmon Treaty to address issues of mutual concern.

SEC. 402. AMENDMENT TO THE FISHERMEN'S PROTECTIVE ACT OF 1967.

(a) The Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) is amended by adding at the end the following new section:

``Sec. 11. <<NOTE: 22 USC 1980a.>> (a) In any case on or after June 15, 1994, in which a vessel of the United States exercising its right of passage is charged a fee by the government of a foreign country to engage in transit passage between points in the United States (including a point in the exclusive economic zone or in an area over which jurisdiction is in dispute), and such fee is regarded by the United States as being inconsistent with international law, the Secretary of State shall, subject to the availability of appropriated funds, reimburse the vessel owner for the amount of any such fee paid under protest.

``(b) In seeking such reimbursement, the vessel owner shall provide, together with such other information as the Secretary of State may require--

``(1) a copy of the receipt for payment;

``(2) an affidavit attesting that the owner or the owner's agent paid the fee under protest; and

``(3) a copy of the vessel's certificate of documentation.

``(c) Requests for reimbursement shall be made to the Secretary of State within 120 days after the date of payment of the fee, or within 90 days after the date of enactment of this section, whichever is later.

``(d) Such funds as may be necessary to meet the requirements of this section may be made available from the unobligated balance of previously appropriated funds remaining in the Fishermen's Protective Fund established under section 9. To the extent that requests for reimbursement under this section exceed such funds, there are authorized to be appropriated such sums as may be needed for reimbursements authorized under subsection (a), which shall be deposited in the Fishermen's Protective Fund established under section 9.

``(e) <<NOTE: Claims.>> The Secretary of State shall take such action as the Secretary deems appropriate to make and collect claims against the foreign country imposing such fee for any amounts reimbursed under this section.

``(f) For purposes of this section, the term `owner' includes any charterer of a vessel of the United States. ''.

(b) The Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) is further amended by adding at the end the following:

``Sec. 12. <<NOTE: Certification. 22 USC 1980b.>> (a) If the Secretary of State finds that the government of any nation imposes conditions on the operation or transit of United States fishing vessels which the United States regards as being inconsistent with international law or an international agreement, the Secretary of State shall certify that fact to the President.

``(b) <<NOTE: President.>> Upon receipt of a certification under subsection (a), the President shall direct the heads of Federal agencies to impose similar conditions on the operation or transit of fishing vessels registered under the laws of the nation which has imposed conditions on United States fishing vessels.

``(c) For the purposes of this section, the term `fishing vessel' has the meaning given that term in section 2101(11a) of title 46, United States Code.

``(d) It is the sense of the Congress that any action taken by any Federal agency under subsection (b) should be commensurate with any conditions certified by the Secretary of State under subsection (a). ''.

(c) Notwithstanding any other provision of law, the Secretary of State shall reimburse the owner of any vessel of the United States for costs incurred due to the seizure of such vessel in 1994 by Canada on the basis of a claim to jurisdiction over sedentary species which was not recognized by the United States at the time of such seizure. Any such reimbursement shall cover, in addition to amounts reimbursable under section 3 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1973), legal fees and travel costs incurred by the owner of any such vessel that were necessary to secure the prompt release of the vessel and crew. Total reimbursements under this subsection may not exceed $25,000 and may be made available from the unobligated balances of previously appropriated funds remaining in the Fishermen's Protective Fund established under section 9 of the Fishermen's Protective Act (22 U.S.C. 1979).

SEC. 403. REAUTHORIZATION.

(a) Section 7(c) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(c)) is amended by striking the third sentence.
(b) Section 7(e) of the Fishermen's Protective Act of 1967 (22 U.S.C. 1977(e)) is amended by striking ``October 1, 1993'' and inserting ``October 1, 2000''.

SEC. 404. TECHNICAL CORRECTIONS.

(a)(1) Section 15(a) of Public Law 103-238 <<NOTE: 16 USC 1383a.>> is amended by striking ``April 1, 1994, '' and inserting ``May 1, 1994 . ''.

(2) <<NOTE: Effective date. 16 USC 1383a note.>> The amendment made by paragraph (1) shall be effective on and after April 30, 1994.

(b) Section 803(13)(C) of Public Law 102-567 (16 U.S.C. 5002(13)(C)) is amended to read as follows:
``(C) any vessel supporting a vessel described in subparagraph (A) or (B) . ''.

TITLE V <<NOTE: Sea of Okhotsk Fisheries Enforcement Act of 1995.>> --FISHERIES ENFORCEMENT IN CENTRAL SEA OF OKHOTSK

SEC. 501. <<NOTE: 16 USC 1823 note.>> SHORT TITLE.

This title may be cited as the ``Sea of Okhotsk Fisheries Enforcement Act of 1995 ''.

SEC. 502. FISHING PROHIBITION.

(a) Addition of Central Sea of Okhotsk.--Section 302 of the Central Bering Sea Fisheries Enforcement Act of 1992 (16 U.S.C. 1823 note) is amended by inserting ``and the Central Sea of Okhotsk '' after ``Central Bering Sea''.
(b) <<NOTE: 16 USC 1823 note.>> Definition.--Section 306 of such Act is amended--
(1) by redesignating paragraphs (2), (3), (4), (5), and (6) as paragraphs (3), (4), (5), (6), and (7), respectively; and
(2) by inserting after paragraph (1) the following:
``(2) Central sea of okhotsk.--The term `Central Sea of Okhotsk' means the Central Sea of Okhotsk area which is more than two hundred nautical miles seaward of the baseline from which the breadth of the territorial sea of the Russian Federation is measured. ''.

TITLE VI <<NOTE: High Seas Driftnet Fishing Moratorium Protection Act.>> --DRIFTNET MORATORIUM

SEC. 601. <<NOTE: 16 USC 1801 note.>> SHORT TITLE.

This title may be cited as the ``High Seas Driftnet Fishing Moratorium Protection Act ''.

SEC. 602. <<NOTE: 16 USC 1826d note.>> FINDINGS.

The Congress finds that--
(1) Congress has enacted and the President has signed into law numerous Acts to control or prohibit large-scale driftnet fishing both within the jurisdiction of the United States and beyond the exclusive economic zone of any nation, including the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 (title IV, Public Law 100-220), the Driftnet Act Amendments of 1990 (Public Law 101-627), and the High Seas Driftnet Fisheries Enforcement Act (title I, Public Law 102-582);
(2) the United States is a party to the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, also known as the Wellington Convention;
(3) the General Assembly of the United Nations has adopted three resolutions and three decisions which established and reaffirm a global moratorium on large-scale driftnet fishing on the high seas, beginning with Resolution 44/225 in 1989 and most recently in Decision 48/445 in 1993;
(4) the General Assembly of the United Nations adopted these resolutions and decisions at the request of the United States and other concerned nations;
(5) the best scientific information demonstrates the wastefulness and potentially destructive impacts of large-scale driftnet fishing on living marine resources and seabirds; and
(6) Resolution 46/215 of the United Nations General Assembly calls on all nations, both individually and collectively, to prevent large-scale driftnet fishing on the high seas.

SEC. 603. <<NOTE: 16 USC 1826d.>> PROHIBITION.

The United States, or any agency or official acting on behalf of the United States, may not enter into any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that would prevent full implementation of the global moratorium on large-scale driftnet fishing on the high seas, as such moratorium is expressed in Resolution 46/215 of the United Nations General Assembly.

SEC. 604. <<NOTE: 16 USC 1826e.>> NEGOTIATIONS.

The Secretary of State, on behalf of the United States, shall seek to enhance the implementation and effectiveness of the United Nations General Assembly resolutions and decisions regarding the moratorium on large-scale driftnet fishing on the high seas through appropriate international agreements and organizations.

SEC. 605. <<NOTE: 16 USC 1826f.>> CERTIFICATION.

The Secretary of State shall determine in writing prior to the signing or provisional application by the United States of any international agreement with respect to the conservation and management of living marine resources or the use of the high seas by fishing vessels that the prohibition contained in section 603 will not be violated if such agreement is signed or provisionally applied.

SEC. 606. <<NOTE: President. 16 USC 1826g.>> ENFORCEMENT.

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.

TITLE VII <<NOTE: Yukon River Salmon Act of 1995. International agreements. Canada.>> --YUKON RIVER SALMON ACT

SEC. 701. <<NOTE: 16 USC 5701 note.>> SHORT TITLE.

This title may be cited as the ``Yukon River Salmon Act of 1995 ''. SEC. 702. <<NOTE: 16 USC

5701.>> PURPOSES.

It is the purpose of this title--

(1) to implement the interim agreement for the conservation of salmon stocks originating from the Yukon River in Canada agreed to through an exchange of notes between the Government of the United States and the Government of Canada on February 3, 1995;

(2) to provide for representation by the United States on the Yukon River Panel established under such agreement; and

(3) to authorize to be appropriated sums necessary to carry out the responsibilities of the United States under such agreement.

SEC. 703. <<NOTE: 16 USC 5702.>> DEFINITIONS.

As used in this title--

(1) The term ``Agreement '' means the interim agreement for the conservation of salmon stocks originating from the Yukon River in Canada agreed to through an exchange of notes between the Government of the United States and the Government of Canada on February 3, 1995.

(2) The term ``Panel '' means the Yukon River Panel established by the Agreement.

(3) The term ``Yukon River Joint Technical Committee '' means the technical committee established by paragraph C.2 of the Memorandum of Understanding concerning the Pacific Salmon Treaty between the Government of the United States and the Government of Canada recorded January 28, 1985.

SEC. 704. <<NOTE: 16 USC 5703.>> PANEL.

(a) Representation.--The United States shall be represented on the Panel by six individuals, of whom--

(1) one shall be an official of the United States Government with expertise in salmon conservation and management;

(2) <<NOTE: Alaska.>> one shall be an official of the State of Alaska with expertise in salmon conservation and management; and

(3) four shall be knowledgeable and experienced with regard to the salmon fisheries on the Yukon River.

(b) Appointments.--Panel members shall be appointed as follows:

(1) The Panel member described in subsection (a)(1) shall be appointed by the Secretary of State.

(2) The Panel member described in subsection (a)(2) shall be appointed by the Governor of Alaska.

(3) The Panel members described in subsection (a)(3) shall be appointed by the

Secretary of State from a list of at least 3 individuals nominated for each position by the Governor of Alaska. The Governor of Alaska may consider suggestions for nominations provided by organizations with expertise in Yukon River salmon fisheries. The Governor of Alaska may make appropriate nominations to allow for, and the Secretary of State shall appoint, at least one member under subsection (a)(3) who is qualified to represent the interests of Lower Yukon River fishing districts, and at least one member who is qualified to represent the interests of Upper Yukon River fishing districts. At least one of the Panel members under subsection (a)(3) shall be an Alaska Native.

(c) Alternates.--The Secretary of State may designate an alternate Panel member for each Panel member the Secretary appoints under subsections (b) (1) and (3), who meets the same qualifications, to serve in the absence of the Panel member. The Governor of the State of Alaska may designate an alternative Panel member for the Panel member appointed under subsection (b)(2), who meets the same qualifications, to serve in the absence of that Panel member.

(d) Term Length.--Panel members and alternate Panel members shall serve four-year terms. Any individual appointed to fill a vacancy occurring before the expiration of any term shall be appointed for the remainder of that term.

(e) Reappointment.--Panel members and alternate Panel members shall be eligible for reappointment.

(f) Decisions.--Decisions by the United States section of the Panel shall be made by the consensus of the Panel members appointed under paragraphs (2) and (3) of subsection (a).

(g) Consultation.--In carrying out their functions under the Agreement, Panel members may consult with such other interested parties as they consider appropriate.

SEC. 705. <<NOTE: 16 USC 5704.>> ADVISORY COMMITTEE.

(a) Appointments.--The Governor of Alaska may appoint an Advisory Committee of not less than eight, but not more than twelve, individuals who are knowledgeable and experienced with regard to the salmon fisheries on the Yukon River. <<NOTE: Alaska.>> At least 2 of the Advisory Committee members shall be Alaska Natives. Members of the Advisory Committee may attend all meetings of the United States section of the Panel, and shall be given the opportunity to examine and be heard on any matter under consideration by the United States section of the Panel.

(b) Compensation.--The members of such Advisory Committee shall receive no compensation for their services.

(c) Term Length.--Advisory Committee members shall serve two-year terms. Any individual appointed to fill a vacancy occurring before the expiration of any term shall be appointed for the remainder of that term.

(d) Reappointment.--Advisory Committee members shall be eligible for reappointment.

SEC. 706. <<NOTE: 16 USC 5705.>> EXEMPTION.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Panel, the Yukon River Joint Technical Committee, or the Advisory Committee created under section 705 of this title.

SEC. 707. <<NOTE: 16 USC 5706.>> AUTHORITY AND RESPONSIBILITY.

(a) <<NOTE: Alaska.>> Responsible Management Entity.--The State of Alaska Department of Fish and Game shall be the responsible management entity for the United States for the purposes of the Agreement.

(b) Effect of Designation.--The designation under subsection (a) shall not be considered to expand, diminish, or change the management authority of the State of Alaska or the Federal Government with respect to fishery resources.

(c) Recommendations of Panel.--In addition to recommendations made by the Panel to the responsible management entities in accordance with the Agreement, the Panel may make recommendations concerning the conservation and management of salmon originating in the Yukon River to the Department of the Interior, Department of Commerce, Department of State, North Pacific Fishery Management Council, and other Federal or State entities as appropriate. Recommendations by the Panel shall be advisory in nature.

SEC. 708. <<NOTE: 16 USC 5707.>> CONTINUATION OF AGREEMENT.

In the event that the Treaty between Canada and the United States of America concerning Pacific Salmon, signed at Ottawa, January 28, 1985, terminates prior to the termination of the Agreement, and the functions of the Panel are assumed by the ``Yukon River Salmon Commission '' referenced in the Agreement, the provisions of this title which apply to the Panel shall thereafter apply to the Yukon River Salmon Commission, and the other provisions of this title shall remain in effect.

SEC. 709. <<NOTE: 16 USC 5708.>> ADMINISTRATIVE MATTERS.

(a) Panel members and alternate Panel members who are not State or Federal employees shall receive compensation at the daily rate of GS-15 of the General Schedule when engaged in the actual performance of duties.

(b) Travel and other necessary expenses shall be paid for all Panel members, alternate Panel members, United States members of the Joint Technical Committee, and members of the Advisory Committee when engaged in the actual performance of duties.

(c) Except for officials of the United States Government, individuals described in

subsection (b) shall not be considered to be Federal employees while engaged in the actual performance of duties, 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. 710. <<NOTE: 16 USC 5709.>> AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated $4,000,000 for each fiscal year for carrying out the purposes and provisions of the Agreement and this title including--

(1) necessary travel expenses of Panel members, alternate Panel members, United States members of the Joint Technical Committee, and members of the Advisory Committee in accordance with Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code;

(2) the United States share of the joint expenses of the Panel and the Joint Technical Committee: Provided, That Panel members and alternate Panel members shall not, with respect to commitments concerning the United States share of the joint expenses, be subject to section 262(b) of title 22, United States Code, insofar as it limits the authority of United States representatives to international organizations with respect to such commitments;

(3) not more than $3,000,000 for each fiscal year to the Department of the Interior and to the Department of Commerce for survey, restoration, and enhancement activities related to Yukon River salmon; and

(4) $400,000 in each of fiscal years 1996, 1997, 1998, and 1999 to be contributed to the Yukon River Restoration and Enhancement Fund and used in accordance with the Agreement.

TITLE VIII--MISCELLANEOUS

SEC. 801. <<NOTE: Dolphins. Marine mammals.>> SOUTH PACIFIC TUNA AMENDMENT.

Section 9 of the South Pacific Tuna Act of 1988 (16 U.S.C. 973g) is amended by adding at the end thereof the following:

``(h) Notwithstanding the requirements of--

``(1) section 1 of the Act of August 26, 1983 (97 Stat. 587; 46 U.S.C. 12108);

``(2) the general permit issued on December 1, 1980, to the American Tunaboat Association under section 104(h)(1) of the Marine Mammal Protection Act (16 U.S.C. 1374(h)(1)); and

``(3) sections 104(h)(2) and 306(a) of the Marine Mammal Protection Act (16 U.S.C. 1374(h)(2) and 1416(a))--

any vessel documented under the laws of the United States as of the date of enactment of the Fisheries Act of 1995 for which a license has been issued under subsection (a) may fish for tuna in the Treaty Area, including those waters subject to the jurisdiction of the United States in accordance with international law, subject to the provisions of the treaty and this Act, provided that no such vessel fishing in the Treaty Area intentionally deploys a purse seine net to encircle any dolphin or other marine mammal in the course of fishing under the provisions of the Treaty or this Act. ''.

SEC. 802. <<NOTE: 16 USC 1821 note.>> FOREIGN FISHING FOR ATLANTIC HERRING AND ATLANTIC MACKEREL.

Notwithstanding any other provision of law--

(1) no allocation may be made to any foreign nation or vessel under section 201 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) in any fishery for which there is not a fishery management plan implemented in accordance with that Act; and

(2) the Secretary of Commerce may not approve the portion of any permit application submitted under section 204(b) of the Act which proposes fishing by a foreign vessel for Atlantic mackerel or Atlantic herring unless--

(A) the appropriate regional fishery management council recommends under section 204(b)(5) of that Act that the Secretary approve such fishing, and

(B) the Secretary of Commerce includes in the permit any conditions or restrictions recommended by the appropriate regional fishery management council with respect to such fishing.

Approved November 3, 1995.

LEGISLATIVE HISTORY--H.R. 716 (S. 267): ----------

HOUSE REPORTS: No. 104-47 (Comm. on Resources).
SENATE REPORTS: No. 104-91 accompanying S. 267 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 141 (1995):
Apr. 3, considered and passed House.
June 30, considered and passed Senate, amended, in lieu of S. 267.
Oct. 25, House concurred in Senate amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 31 (1995): Nov. 3, Presidential statement.

<all>

MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT REAUTHORIZATION ACT
(P.L. 109-479)

TITLE V —IMPLEMENTATION OF WESTERN AND CENTRAL PACIFIC FISHERIES CONVENTION

SEC. 501. SHORT TITLE.
This title may be cited as the ''Western and Central Pacific Fisheries Convention Implementation Act''.

SEC. 502. DEFINITIONS.
In this title:

(1) 1982 CONVENTION.—The term ''1982 Convention'' means the United Nations Convention on the Law of the Sea of 10 December 1982.

(2) AGREEMENT.—The term ''Agreement'' means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks.

(3) COMMISSION.—The term ''Commission'' means the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean established in accordance with this Convention.

(4) CONVENTION AREA.—The term ''convention area'' means all waters of the Pacific Ocean bounded to the south and to the east by the following line: From the south coast of Australia due south along the 141th meridian of east longitude to its intersection with the 55th parallel of south latitude; thence due east along the 55th parallel of south latitude to its intersection with the 150th meridian of east longitude; thence due south along the 150th meridian of east longitude to its intersection with the 60th parallel of south latitude; thence due east along the 60th parallel of south latitude to its intersection with the 130th meridian of west longitude; thence due north along the 130th meridian of west longitude to its intersection with the 4th parallel of south latitude; thence due west along the 4th parallel of south latitude to its intersection with the 150th meridian of west longitude; thence due north along the 150th meridian of west longitude.

(5) EXCLUSIVE ECONOMIC ZONE.—The term ''exclusive economic zone'' means the zone established by Presidential Proclamation Numbered 5030 of March 10, 1983.

(6) FISHING.—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 for any purpose;

(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 subparagraphs (A) through (D), including transshipment; and

(F) use of any other vessel, vehicle, aircraft, or hovercraft, for any activity described in subparagraphs (A) through (E) except for emergencies involving the health and safety of the crew or the safety of a vessel.

(7) FISHING VESSEL.—The term ''fishing vessel'' means any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels, and any other vessel directly involved in such fishing operations.

(8) HIGHLY MIGRATORY FISH STOCKS.—The term ''highly migratory fish stocks'' means all fish stocks of the species listed in Annex 1 of the 1982 Convention, except sauries, occurring in the Convention Area, and such other species of fish as the Commission may determine.

(9) SECRETARY.—The term ''Secretary'' means the Secretary of Commerce.

(10) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and any other commonwealth, territory, or possession of the United States.

(11) TRANSHIPMENT.—The term ''transshipment'' means the unloading of all or any of the fish on board a fishing vessel to another fishing vessel either at sea or in port.

(12) WCPFC CONVENTION; WESTERN AND CENTRAL PACIFIC CONVENTION.— The terms ''WCPFC Convention'' and ''Western and Central Pacific Convention'' means the Convention on the Conservation and Management of the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, (including any annexes, amendments, or protocols which are in force, or have come into force, for the United States) which was adopted at Honolulu, Hawaii, on September 5, 2000, by the Multilateral High Level Conference on the Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.

SEC. 503. APPOINTMENT OF UNITED STATES COMMISSIONERS.

(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 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 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 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.

(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.

(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.)

SEC. 504. AUTHORITY AND RESPONSIBILITY OF THE SECRETARY OF STATE. The Secretary of State may—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, decisions, and other communications of and to the Commission;

(2) in consultation with the Secretary approve, disapprove, object to, or withdraw objections to bylaws and rules, or amendments thereof, adopted by the WCPFC Commission, and, with the concurrence of the Secretary to approve or disapprove the general annual program of the WCPFC Commission with respect to conservation and management measures and other measures proposed or adopted in accordance with the WCPFC Convention; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1).

SEC. 505. RULEMAKING AUTHORITY OF THE SECRETARY OF COMMERCE.

(a) PROMULGATION OF REGULATIONS.—The Secretary, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of the Department in which the Coast Guard is operating, is authorized to promulgate such regulations as may be necessary to carry out the United States international obligations under the WCPFC Convention and this title, 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 WCPFC 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) ADDITIONS TO FISHERY REGIMES AND REGULATIONS.—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.

SEC. 506. ENFORCEMENT.

(a) IN GENERAL.—The Secretary may—

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

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

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

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

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

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

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

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

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

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

(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 or any person;

(D) when required by court order; or

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

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

(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 an applicable permit issued pursuant to this title;

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

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

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

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

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

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

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

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

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

(12) to fail to make, keep, or furnish any catch returns, statistical records, or other reports as are required by regulations adopted pursuant to this title to be made, kept, or furnished;

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

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

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

SEC. 508. COOPERATION IN CARRYING OUT CONVENTION.

(a) FEDERAL AND STATE AGENCIES; PRIVATE INSTITUTIONS AND ORGANIZATIONS.—The Secretary may cooperate with agencies of the United States government, any public or private institutions or organizations within the United States or abroad, and, through the Secretary of State, the duly authorized officials of the government of any party to the WCPFC Convention, in carrying out responsibilities

under this title.

(b) SCIENTIFIC AND OTHER PROGRAMS; FACILITIES AND PERSONNEL.—All Federal agencies are authorized, upon the request of the Secretary, to cooperate in the conduct of scientific and other programs and to furnish facilities and personnel for the purpose of assisting the Commission in carrying out its duties under the WCPFC Convention.

(c) SANCTIONED FISHING OPERATIONS AND BIOLOGICAL EXPERIMENTS.— Nothing in this title, or in the laws or regulations of any State, prevents the Secretary or the Commission from—

(1) conducting or authorizing the conduct of fishing operations and biological experiments at any time for purposes of scientific investigation; or

(2) discharging any other duties prescribed by the WCPFC Convention.

(d) STATE JURISDICTION NOT AFFECTED.—Except as provided in subsection (e) of this section, nothing in this title shall be construed to diminish or to increase the jurisdiction of any State in the territorial sea of the United States.

(e) APPLICATION OF REGULATIONS—

(1) IN GENERAL.—Regulations promulgated under section 506(a) of this title shall apply within the boundaries of any State bordering on the Convention area if the Secretary has provided notice to such State, the State does not request an agency hearing, and the Secretary determines that the State—

(A) has not, within a reasonable period of time after the promulgation of regulations pursuant to this title, enacted laws or promulgated regulations that implement the recommendations of the Commission within the boundaries of such State; or

(B) has enacted laws or promulgated regulations that implement the recommendations of the commission within the boundaries of such State that—

(i) are less restrictive that the regulations promulgated under section 506(a) of this title; or

(ii) are not effectively enforced.

(2) DETERMINATION BY SECRETARY.—The regulations promulgated pursuant to section 506(a) of this title shall apply until the Secretary determines that the State is effectively enforcing within its boundaries measures that are not less restrictive than the regulations promulgated under section 506(a) of this title.

(3) HEARING.—If a State requests a formal agency hearing, the Secretary shall not apply the regulations promulgated pursuant section 506(a) of this title within that State's boundaries unless the hearing record supports a determination under paragraph (1)(A) or (B).

(f) REVIEW OF STATE LAWS AND REGULATIONS.—To ensure that the purposes of subsection (e) are carried out, the Secretary shall undertake a continuing review of the laws and regulations of all States to which subsection (e) applies or may apply and the extent to which such laws and regulations are enforced.

SEC. 509. TERRITORIAL PARTICIPATION.

The Secretary of State shall ensure participation in the Commission and its subsidiary bodies by American Samoa, Guam, and the Northern Mariana Islands to the same extent provided to the territories of other nations.

SEC. 510. EXCLUSIVE ECONOMIC ZONE NOTIFICATION.

Masters of commercial fishing vessels of nations fishing for species under the management authority of the Western and Central Pacific Fisheries Convention that do not carry vessel monitoring systems capable of communicating with United States enforcement authorities shall, prior to, or as soon as reasonably possible after, entering and transiting the Exclusive Economic Zone seaward of Hawaii and of the Commonwealths, territories, and possessions of the United States in the Pacific Ocean area—

(1) notify the United States Coast Guard or the National Marine Fisheries Service Office of Law Enforcement in the appropriate region of the name, flag state, location, route, and destination of the vessel and of the circumstances under which it will enter United States waters;

(2) ensure that all fishing gear on board the vessel is stowed below deck or otherwise removed from the place where it is normally used for fishing and placed where it is not readily available for fishing; and

(3) where requested by an enforcement officer, proceed to a specified location so that a vessel inspection can be conducted.

SEC. 511. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Commerce such sums as may be necessary to carry out this title and to pay the United States' contribution to the Commission under section 5 of part III of the WCPFC Convention.

Department of Commerce $ National Oceanic & Atmospheric Administration $ National Marine Fisheries Service

NATIONAL MARINE FISHERIES SERVICE POLICY DIRECTIVE PD 06-101 ***JUNE 17, 2006***
Enforcement
VMS Data Access and Dissemination Policy
NOTICE: This publication is available at: http://www.nmfs.noaa.gov/directives/.
OPR: EN (D. Jones) **Certified by:** EN (D. Jones) **Type of Issuance:** Renewed 08
SUMMARY OF REVISIONS:

Technical revision by deleting ambiguous references to NAO 216-100. The VMS data policy does not modify the scope or effect of NAO 216-100.

Introduction.

This policy establishes procedures to access, disseminate and manage information collected through NOAA's Vessel Monitoring System (VMS).

The National Oceanic and Atmospheric Administration (NOAA) Fisheries Service Office for Law Enforcement (OLE) has been delegated the responsibility to develop, operate and manage NOAA's VMS. Within NOAA Fisheries, OLE is responsible for ensuring the collection, storage and security of original VMS data in a manner which preserves the integrity and credibility of the data commensurate with standards that ensure the data's acceptance for use in investigative and legal proceedings, protected resources and fisheries management, and science.

VMS collects data such as on participating vessels' identity, location and activity throughout the U. S. Exclusive Economic Zone, Pacific and Atlantic Oceans, and other bodies of water for enforcement, management and science purposes pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Authorized use of and access to VMS data is governed by Magnuson-Stevens Act regulations found at 50 CFR 600.405-425 and NAO 216-100.

NOAA Fisheries uses this data for enforcement, fisheries management, science and research.

NOAA Fisheries intends further to develop and use the VMS system as efficiently and effectively as is practical and within the full scope of purpose and utility that the technology may provide.

Objective. The purpose of this policy is to ensure lawful and timely access to, and dissemination and management of, VMS information within NOAA Fisheries and to our external partners.

Authorities and Responsibilities. This directive establishes the following authorities and responsibilities:

Legal Restrictions: Use and dissemination of VMS information is subject to the confidentiality provisions of Section 402(b) of the Magnuson-Stevens Fishery Conservation and Management Act and NAO 216-100.

Guidelines and Procedures: It is the policy of NOAA Fisheries to utilize VMS to aid in monitoring, control and surveillance of certain fishing vessels that are management under U.S. fishery management programs and other vessels that may participate.

Authorized Users and Non-Disclosure Agreements: Each authorized user must provide a current, written and signed "Protection of Confidential Fisheries Statistics" agreement (or evidence thereof) to OLE before gaining access to VMS information.

Use, Storage and Disposal of VMS Information: VMS information must be used, stored, and archived or disposed of as authorized and prescribed by legal provisions cited above.

References. This policy directive is supported by the references and glossary of terms listed in Attachment 1.

/s/ June 7, 2006

William T. Hogarth, Ph.D. Date
Assistant Administrator
for NOAA Fisheries

Attachment 1

Magnuson-Stevens Fishery Conservation and Management Act 50 CFR 600.405-425 NOAA Administrative Order 216-100

NOAA FISHERIES SERVICE

VMS Data Access and Dissemination Policy

Effective Date: June 17. 2006

Purpose and Background

The National Oceanic and Atmospheric Administration Fisheries Service Office for Law Enforcement (OLE) has been delegated the responsibility to develop, operate and manage NOAA's Vessel Monitoring System (VMS). This policy establishes procedures to access, disseminate and manage information collected through VMS.

VMS collects data from fisheries vessels for enforcement, management and science purposes pursuant to the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Authorized use of and access to VMS data is governed by Section 402 of the Magnuson-Stevens Act, its implementing regulations found at 50 CFR 600.405-425 and NAO 216-100.

Within NOAA Fisheries, OLE is responsible for ensuring the collection, storage and security of original VMS data in a manner which preserves the integrity and credibility of the data commensurate with evidentiary standards. This will ensure its acceptance in both legal proceedings, and for use by NOAA Fisheries in protected resources, fisheries management, and science based activities.

VMS provides NOAA information about participating vessels' identity, location and activity throughout the U.S. EEZ, Pacific and Atlantic Oceans, and other bodies of water. VMS can provide 24 or more position reports per day, accurate to 100 meters, 365 days per year to continuously and accurately monitor and enforce time and effort regulations, restricted areas, and international boundaries and obligations, and other fishery management measures.

VMS also provides an effective tool to supplement traditional enforcement activities. For example, VMS can be used to provide a comprehensive surveillance framework and to more efficiently direct the limited number of U.S. Coast Guard assets available for fisheries patrols.

The VMS system is also used extensively to collect data for the purposes of fisheries management, science and research. A number of fishery management plans include VMS requirements. VMS information may also be crucial in making determinations within a timely manner whether catch limits within specially designated areas have been reached. As a tool for protected resources, VMS is used to monitor vessel activities in and near critical habitat areas. VMS is also an invaluable data quality control for use in conjunction with NOAA Fisheries observer programs. Use of VMS data for these purposes is expected to increase in the future.

NOAA Fisheries therefore intends further to develop and use the VMS system as efficiently and effectively as is practical and within the full scope of purpose and utility that the technology may provide.

This purpose of this policy is to ensure lawful and timely access to, and dissemination and management of, VMS information within NOAA Fisheries and to our external partners.

Policy Guidance for VMS Information Access, Dissemination and Management Legal Restrictions

VMS information collected from fishing vessels is considered "information submitted to the Secretary" in compliance with fishery regulations and, therefore, use and dissemination of the information is subject to the confidentiality provisions of Section 402(b) of the Magnuson-Stevens Act. In specific instances VMS data may also be categorized as Law Enforcement Sensitive due to its nexus with on-going investigations. Use and dissemination of VMS information is subject to additional regulations and restrictions found at 50 CFR 600.405-425 and NAO 216-100.

The NOAA Fisheries Office of Law Enforcement (OLE) will document and maintain a list of all additional authorized users.

Guidelines and Procedures

It is the policy of NOAA Fisheries Service to utilize VMS to aid in monitoring, control and surveillance of certain fishing vessels that are managed under U.S. federal fishery management programs, and other vessels that may participate (voluntarily or otherwise) in the VMS, and to use VMS data for scientific research or management purposes.

The OLE will be responsible for the collection, processing, dissemination, archiving, and/or destroying of VMS information. OLE will provide access to and/or dissemination of VMS information routinely collected to authorized persons. *Information routinely collected* means that information which is required to be collected under the promulgated law or regulation, including all polling times and location information collected by the VMS from fishing vessels.

Under some circumstances, OLE may elect to restrict access to and dissemination of VMS information based on Law Enforcement Sensitive restrictions. For example, this could include information routinely collected and/or specific polling of a vessel over and above the normal polling sequence for such vessels, or additional information collected or generated from a routine VMS investigative operations, such as communications with the vessel. It shall be the responsibility of the OLE to assure that such restrictions occur only as necessary on a case by case basis and only for the minimum time necessary to meet enforcement mission requirements. In determining the need to invoke this restriction the OLE will give careful consideration to the operational needs of other agency components and the potential that such restrictions may diminish or otherwise hamper the mission of others dependent upon the information. In this case, OLE will notify any impacted office prior to restriction of access. Though OLE is responsible for operation of the VM system, any significant expenses and support resources necessary to effect the distribution of VMS data to entities external to NOAA will be the responsibility of those entities unless otherwise provided for within budgetary and planning decisions. The OLE will support and facilitate a cooperative and participatory approach toward assisting other offices.

Authorized Users and Non-Disclosure Agreements

Pursuant to NAO 216-100, each authorized external party must provide a current, written and signed "Protection of Confidential Fisheries Statistics" agreement (or evidence thereof) to OLE before gaining access to VMS information.

Violations of NAO 216-100 will result in immediate termination of access and/or dissemination of VMS data along with the return of all data previously provided.

VMS Information

a. Use of Information

VMS information requested by an authorized user may be used only for the purpose authorized by legal provisions cited above. Access to the VMS is subject to cancellation and sanctions for improper dissemination of information.

b. Storage of Information

All VMS information must be maintained in a secure records environment to prevent unauthorized access or dissemination.

c. Method of Disposal

VMS information must be used, stored, and archived or disposed of as authorized and prescribed by legal provisions cited above.