LEGI-SLATE Report for the 96th Congress July 2, 1987 10:40(EDT)

Status Report for S.917
All Actions Since Introduction

Measure, Sponsor and Short Title:
S.917 by MAGNUSON (D-WA) -- FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976, AMENDMENTS

All Specified Actions:
04/09/79 -- In The SENATE
Referred to SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

04/10/79 -- In The SENATE
Ordered reported, as amended, by SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

04/23/79 -- In The SENATE
Report filed by SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION (S.REPT. 96-72)

04/30/79 -- In The SENATE
Motion to adopt committee amendment(s)
Consideration of committee amendment(s)
Agreed to amendment (by Voice Vote)
Passed (agreed to) (by Voice Vote)

05/01/79 -- In The HOUSE
Received in the House, after passage in the Senate

06/25/79 -- In The HOUSE
Motion by BREAUX (D-LA) TO STRIKE ALL AFTER THE ENACTING CLAUSE AND ANSERT TEXT OF HR 1798 IN LEIU OF
Agreed to motion (by Voice Vote)
Passed to third reading (by Voice Vote)
Passed (agreed to) (by Voice Vote)

06/26/79 -- In The SENATE
Received in the Senate, after passage in the House

08/01/79 -- In The SENATE
Returned to the Senate from the House, with House amendment(s)
Motion by MAGNUSON (D-WA) to agree to House amendment(s) IN NATURE OF A SUBSTITUTE
Agreed to motion (by Voice Vote)
Motion to agree to House amendment(s) --AND--
Amendment offered by MAGNUSON (D-WA) (AMENDMENT 505, CR PAGE S-11172)
Agreed to motion (by Voice Vote) --AND--
Agreed to amendment (by Voice Vote)

08/02/79 -- In The HOUSE
Motion to call the measure from the table --AND--
Motion by MURPHY (D-NY) to agree to Senate amendment(s)
Agreed to motion (by Voice Vote)

08/03/79 -- In The SENATE
Signed in the Senate

08/03/79 -- In The HOUSE
Signed in the House

08/15/79 -- In The SENATE
Signed by the President
Became Public Law No. 96-61

*** Remember! You are in the 96th Congress

Please enter NAME of desired report (or 'MENU').....

Citation 106 S.Ct. 2860
92 L.Ed.2d 166, 54 U.S.L.W. 4929

JAPAN WHALING ASSOCIATION and Japan Fisheries Association, Petitioners

v.

AMERICAN CETACEAN SOCIETY et al.

Malcolm BALDRIGE, Secretary of Commerce, et al., Petitioners

v.

AMERICAN CETACEAN SOCIETY et al.

Nos. 85-954, 85-955.

Argued April 30, 1986.

Decided June 30, 1986.

Wildlife conservation groups brought action for declaratory relief and injunction, alleging that cabinet members breached statutory duty with respect to enforcement of international whaling quotas. The United States District Court for the District of Columbia, Charles R. Richey, J., 604 F.Supp. 1398, granted mandamus relief, and denied stay pending appeal, 604 F.Supp. 1411. The Court of Appeals, J. Skelly Wright, Circuit Judge, 768 F.2d 426, affirmed. Certiorari was granted. The Supreme Court, Justice White, held that: (1) political question doctrine did not bar judicial resolution of controversy; (2) under Pelly and Packwood Amendments, Secretary of Commerce was not required to certify that Japan's whaling practices diminished effectiveness of

106 S.Ct. 2860

(2)
92k68(1)
CONSTITUTIONAL LAW
k. In general.
U.S. 1986.
Political question doctrine did not bar judicial resolution of controversy as to whether, under Pelly and Packwood Amendments, Secretary of Commerce was required to certify that Japan's whaling practices diminished effectiveness of International Convention for Regulation of Whaling because Japan's harvest exceeded quotas established under Convention since challenge to decision not to certify Japan for harvesting whales in excess of quotas presented purely legal question of statutory interpretation. Fishermen's Protective Act of 1967, § 8, as amended, 22 U.S.C.A. § 1978; Magnuson Fishery Conservation and Management Act, § 201, as amended, 16 U.S.C.A. § 1821.
Japan Whaling Ass'n v. American Cetacean Soc.
106 S.Ct. 2860, 92 L.Ed.2d 166, 54 U.S.L.W. 4929

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Agreed to motion (by Voice Vote)

08/03/79 -- In The SENATE
Signed in the Senate
Presented to the President

association, plus those Indians of Yaqui blood who are U.S. citizens, and direct lineal descendants of enrolled members.

TENO RONCALIO,
MO UDALL,
TED RISENHOOVER,
Managers on the Part of the House.
JAMES ABOUREZK,
HOWARD M. METZENBAUM,
JOHN MELCHER,
DEWEY F. BARTLETT,
MARK O. HATFIELD,
DENNIS DECONCINI,
Managers on the Part of the Senate.

FISHERMEN'S PROTECTIVE ACT OF 1967

P.L. 95–376, see page 92 Stat. 714

House Report (Merchant Marine and Fisheries Committee) No. 95–1029, Mar. 31, 1978 [To accompany H.R. 10878]

Senate Report (Commerce, Science, and Transportation Committee) No. 95–816, May 12, 1978 [To accompany H.R. 10878]

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

House April 10, August 10, 17, 1978

Senate May 22, August 17, 1978

The House Report is set out.

HOUSE REPORT NO. 95–1029

[page 1]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 10878) to extend until October 1, 1981, the voluntary insurance program provided by section 7 of the Fishermen's Protective Act of 1967, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

* * * * * * * * *

[page 4]

PURPOSE OF THE LEGISLATION

The purposes of the legislation are threefold: to extend the cooperative insurance program carried out under section 7 of the Fishermen's

[page 5]

Protective Act for an additional three years, until October 1, 1981; to establish a compensation program for American fishermen whose fishing gear is damaged, destroyed, or lost as a result of the actions of foreign fishing vessels within the 200-mile fisheries zone of the United States; and to provide additional protection to endangered and threatened species of fish and wildlife.

LEGISLATIVE BACKGROUND

H.R. 10878 was introduced on February 9, 1978, by Mr. Murphy of New York and cosponsored by Mr. Leggett, Mr. Forsythe, Mr. Rogers, Mr. Bowen, Mr. Trible, Mr. Hubbard, Mr. Hughes, and Mr. Dornan.

The Subcommittee on Fisheries and Wildlife Conservation and the Environment held hearings on H.R. 10878 on February 27, 1978. All witnesses testifying at the hearings were in strong support of the legislation. Those witnesses testifying were: Mr. John D. Negroponte, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs; Mr. Jack Gehringer, Deputy Director of National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; Mr. August Felando, general manager, American Tunaboat Association, and Mr. Tom Garrett, legislative coordinator, Defenders of Wildlife.

No departmental reports were received on the legislation.

In his statement before the subcommittee, Mr. Negroponte stated that "our Department supports the extension of the legislation for the period proposed (3 years), and we would like to emphasize that the failure to extend the provisions of section 7 would have an effect on our tuna industry which would not be helpful to the current negotiations which are underway to establish some kind of new regime governing fishing for tuna in the Eastern Pacific, and that failure to extend that legislation would accentuate the atmosphere of uncertainty which already exists in our industry and could very likely accelerate the transfer of United States tuna vessels to foreign flags, a move which would again not only make our negotiations more difficult, but would probably be detrimental to the conservation of both tuna and porpoise."

In his testimony before the subcommittee, Mr. Gehringer stated that the Department of Commerce supported the extension of section 7 of the act for 2 additional years, 1979 and 1980.

Also, the Commerce Department witness expressed concern over section 10 of the act, which became a part of the act on November 17, 1977, pursuant to public law 95–194. Presently, section 10 authorizes the Secretary of Commerce to make loans for damages to a commercial fishing vessel or to its fishery gear for claims in excess of $2,000 when such damages are reasonably determined to have been caused by a foreign vessel operating within the 200-mile fishery zone of the United States. In explaining his concern over this provision of the act, Mr. Gehringer stated that "First, there is no disincentive for claims of damages where the claimant himself is at fault. If, on investigation, the Secretary determines the claimant is at fault, the 3½ percent interest loan is merely rewritten for a shorter . . . period of time. Second, if the Secretary determines that the claimant was not at fault the repayment of the loan is canceled and a refund of any principal and interest payments is made. We believe there may be other, more

appropriate methods of financing a program to cover damages to commercial vessels and fishing gear caused by foreign vessels or crews. These include a fisheries loan fund or a program of loan guarantees. Third, the interest rate of 3½ percent is unreasonably low, compared with the cost of government borrowing. Fourth, since enactment of the Fishery Conservation and Management Act of 1976 (FCMA) there appears to be a reduction in the rates of incidents that would be covered by the loan provisions since under the FCMA the license for a foreign vessel can be withheld pending resolution of outstanding claims against it for damage or loss. We are presently investigating these elements of the loan provisions of Public Law 95–194 and will be submitting to the Congress very soon draft legislation which will meet these concerns."

Mr. Garrett testified not only for Defenders of Wildlife but also on behalf of the following organizations: The Society for Animal Protective Legislation, the Humane Society of the United States, International Primate Protection League and the Washington Humane Society. In his testimony, Mr. Garrett pointed out that "It is the unanimous view of these organizations listed that section 7 of the Fishermen's Protective Act should be reauthorized for a full 3-year period."

Mr. Garrett further pointed out that section 8 of the Fishermen's Protective Act, better known as the Pelly amendment . . . "has been of extraordinary value, both to fishermen and to the conservation movement. Much of the progress we have made in protecting whales may be attributed to the existence of Pelly amendment. . . ."

Mr. Garrett proposed an amendment to section 8 of the act that would broaden the Pelly amendment to authorize the President to embargo wildlife products from any country whose nationals have been certified by the Secretary of Commerce or the Secretary of the Interior as diminishing the effectiveness of an international program for endangered or threatened species.

After giving careful consideration to the evidence presented at the hearings, on March 14, 1978, the subcommittee unanimously ordered H.R. 10878 reported to the full committee, with amendments. On March 16, 1978, the full committee, by voice vote, unanimously ordered H.R. 10878 reported to the House, with amendments, as ordered reported by the subcommittee.

Briefly explained, H.R. 10878, as ordered reported, would: (1) extend the section 7 voluntary insurance program for 3 additional years, until October 1, 1981; (2) rewrite section 10 of the act to establish a program financed by participating domestic fishing vessel owners and foreign vessel owners authorized to fish within the U.S. 200-mile fishery zone that would compensate participating domestic fishing vessel owners whose fishing gear is damaged, destroyed, or lost as a result of the action of any vessels within the zone; and (3) extend section 8 of the act to authorize the President to embargo wildlife products from any nation whose nationals have been certified by the Secretary of Commerce or the Secretary of the Interior as engaging in trade or taking which diminishes the effectiveness of an international program for the conservation of endangered or threatened species.

THE AMENDMENTS

The amendments to the bill were accomplished by striking out all after the enacting clause and inserting new language, and by amending the title of the bill.

BACKGROUND AND NEED FOR THE LEGISLATION

SECTION 7

Section 7 was added to the Fishermen's Protective Act on August 12, 1968, pursuant to Public Law 90–482. Its purpose was to authorize a voluntary insurance program for the reimbursement of certain losses (other than fines, license fees, registration fees, and other direct charges which are fully reimbursable through the Secretary of State under section 3 of the act) incurred as a result of the seizure of a U.S. commercial fishing vessel by a foreign country on the basis of rights or claims in territorial waters or on the high seas which are not recognized by the United States. Section 7 provided that any owner of a U.S. commercial fishing vessel, upon application, may enter into an agreement for such coverage with the Secretary of Commerce.

The agreement would provide for guarantee payments to participating vessel owners to cover such things as damage, destruction, loss, or confiscation of the vessel, fishing gear or other equipment, dockage and utility fees, payment to the owners and crew of the market value of fish confiscated or spoiled during the detention of the vessel, and payment to owners and crew of up to 50 percent of the estimated gross income lost as the result of the seizure or detention. Certain administrative procedures were also included to allow the Secretary to carry on the program. It established a fishermen's protective fund, as a separate account in the Treasury, until February 8, 1973, to provide for reimbursement of losses and costs.

Section 7 also provides that the owners of vessels entering into agreements with the Secretary are required to pay an annual fee which is adequate to cover the cost of administering the program and a reasonable portion of any payments made under the program.

In setting such fees, the Secretary is required to pay at least one-third of the total cost of the program. Presently, the Federal Government is paying about 60 percent of such cost and the vessel owners participating in the program are paying the remaining 40 percents.

In 1972, pursuant to Public Law 92–569, section 7 of the Act was extended to July 1, 1977; in 1976, pursuant to Public Law 94–273, section 7 was extended until October 1, 1977; and in 1977 pursuant to Public Law 95–194, section 7 was extended until October 1, 1978.

Prior to the passage of the act in 1954, the United States only recognized a 3-mile territorial sea and a 3-mile fisheries zone. In 1966, pursuant to Public Law 89–658, the United States established a fisheries zone of 9 miles contiguous to its 3-mile territorial sea. Consequently, from 1966 until March 1, 1977, the United States did not recognize the right of any coastal nation to regulate fish beyond 12 miles from its shores.

In 1976, pursuant to Public Law 94–265, the fisheries jurisdiction of the United States was extended to 200 miles effective March 1, 1977. Pursuant to that act, the United States made it clear that it was

excluding from the coverage of its 200-mile fisheries zone all species of tuna and that it did not recognize the right of any coastal nation to regulate tuna.

Pursuant to section 202(e) of the Act (the nonrecognition provision), as amplified by section 403 of such Act (which amended section 2 of the Fishermen's Protective Act), the United States made it clear that it does not recognize the claim of any foreign nation to a fishery conservation zone beyond such nation's territorial sea (recognized by the United States as of this date to be 3 miles) if such nation fails to take into account traditional fishing activity of U.S. vessels; or fails to recognize that all species of tuna are to be managed by international agreements, whether or not such nation is a signatory to any such agreement; or imposes conditions or restrictions on U.S. fishing vessels which are unrelated to fishery conservation and management, or which are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the fishery management authority of the United States. The net effect of these provisions is to allow seizure insurance protection, under certain conditions, for vessels other than tuna vessels (for example, shrimp vessels) which operate in the 200-mile fisheries zone of other nations.

Since the inception of the cooperative insurance program in 1969, the program has met with considerable enthusiasm and interest by the U.S. commercial fishing industry. By 1972, guaranteed agreements numbered 213 under the cooperative program, of which 103 were for tuna vessels and 110 for shrimp vessels..

For the period from July 1, 1976, to July 1, 1977, there were 166 vessels participating under the program, of which 157 were tuna vessels and nine were shrimp vessels. As of this date, 119 vessels are participating under the program, 116 of which are tuna vessels and three of which are shrimp vessels.

Since the inception of the program there have been 119 seizures eligible for compensation under the program. Equador was responsible for 88 of those seizures, Peru for 30, and Panama for 1. Claims resulting from these seizures have amounted to over $3 million. Fees collected have totaled over $1.5 million and there is a present balance in the account of approximately $1.1 million. Since 1975 there have been no seizures.

The best estimates provided by the Department of Commerce indicate there would be no cost to the Federal Government to administer the program for the 3-year extension.

SECTION 8

Section 2 of H.R. 10878 would expand the coverage of section 8—the so-called Pelly amendment—to the Fishermen's Protective Act, to authorize the President to embargo wildlife products from countries where nationals have acted in a manner which, directly or indirectly, diminishes the effectiveness of any international program for the conservation of endangered or threatened species.

As currently written, the Pelly amendment requires the Secretary of Commerce to certify to the President when she determines that nationals of a foreign country are diminishing the effectiveness of an international fishery conservation program. Once such a certification

has been made, the President has the option of embargoing the fish products of the offending nation. This very simple provisions has been one of our most effective tools in the effort to conserve the world's greatest whales and has played a major role in convincing Japan and Russia to adhere to whaling quotas established by the International Whaling Commission (IWC).

In 1973, Japan and Russia announced their intention to disregard the whaling quotas etablished by the IWC. During the 1973–1974 whaling season, these nations harvested sperm, fin and minke whales well in excess of IWC quotas. In response to this action, in 1974, the United States initiated actions under the Pelly amendment when the Secretary of Commerce certified that Japan and Russia, by disregarding quotas set by the Commission, were diminishing the effectiveness of the IWC's conservation program.

This certification by the United States is generally regarded as convincing the Japanese and Russians to adhere to future IWC quotas. At the 1974 meeting of the IWC, both nations agreed to abide by the decisions of the International Whaling Commission despite the fact that the Commission significantly strengthened its conservation program. In light of this, President Ford, on January 16, 1973, decided not to impose an embargo on the fishery products of the offending nations.

The 1974–75 actions dramatically demonstrate the value of the Pelly amendment to the United States in the conduct of international fishery negotiations. Since 1974, the Pelly amendment has served the useful function of quietly persuading nations to adhere to the decisions of international fishery conservation bodies.

Last year, President Carter reiterated the importance of the Pelly amendment in his environmental message. He directed the Secretary of Commerce to report to him within 60 days on any actions by other countries that have diminished the effectiveness of the International Whaling Commission's conservation program. In November, 1977, the Secretary of Commerce reported to the President that two nonmembers of the IWC—Peru and Korea—were taking whales in excess of IWC quotas. In March, 1978, the Secretary of Commerce reported to the subcommittee that although these nations are violating IWC quotas, certification under the Pelly amendment is pending a thorough documentation and substantiation of each action that may diminish the effectiveness of the IWC conservation regime.

H.R. 10878 would attempt to expand the success the United States has achieved in the conservation of whales to the conservation of endangered and threatened species. The legislation is intended to give the United States some leverage in reducing the alarming international trade in endangered and threatened species.

The concept ultimately embodied in H.R. 10878 was originally suggested to the Subcommittee by a collection of wildlife conservation organizations including Defenders of Wildlife, Society for Animal Protective Legislation, the Humane Society of the United States, the International Fund for Animal Welfare, Fund for Animals, International Primate Protection League and the Washington Humane Society. The representative of these groups testified that while the decline of most marine mammals and some fish stocks has been arrested, the status of a vast number of other species has undergone a dramatic

decline. The Department of the Interior estimates that approximately 300 species are becoming extinct each decade.

The U.S. Fish and Wildlife Service indicated to the committee that a list of the 10 endangered species most severely affected by continuing unrestricted international trade includes the following animals:

Species	*Distribution*
Jaguar	Central and South America.
Ocelot	Central and South America.
Stumptail macaque	India to southern China and Malay Peninsula.
Goedi's marmoset	Brazil, Colombia, Ecuador, Peru.
Giant otter	South America.
Hawksbill sea turtle	Tropical seas.
Morelet's crocodile	Mexico, Belize, Guatemala.
Nile crocodile	Africa.
Resplendent quetzel	Central America.

The United States is a signatory to the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Unfortunately, under the terms of the Convention, the United States has no ability to persuade other nations to comply with the Convention unless the illegally traded articles are imported into the United States.

The primary function of the International Convention is to regulate international trade in the species it protects. Its rules, however, apply only to import, export and reexport. The Convention does not apply to shipments between nations, to the taking of species, or to the preservation of habitat.

The Convention approaches the protection of species from the standpoint of how trade would affect the status of a particular species in the wild and its native country. Generally, the destruction of habitat by human development is the major cause of the decline and extinction of animals. But international trade can be an important factor in the decline of some species, if it promotes overhunting for fur or hides, food products, pets, exhibition, sport, or other purposes. The Convention recognizes that controls are essential now for many imperiled species, and that safeguards are necessary for others that could be jeopardized by a high demand in export or import markets.

The Convention established three appendices, or categories, of species to provide appropriate and differing degrees of control. Appendix I species are species which are threatened with extinction and are or may be affected by trade. These species are in need of particularly strict regulation to prevent their future endangerment. Appendix II species which, although not now necessarily threatened with extinction, may become so unless their trade is regulated and monitored. Species may be placed on appendix III by any Convention nation if the species is subject to conservation regulation within that nation's jurisdiction. The purpose of appendix III is to gain the cooperation of other countries in reinforcing an individual nation's conservation measures.

The Convention's most stringent controls are directed at regulating activities involving species listed on appendx I. All shipments of such species, their parts or derivatives require two permits—one from the importing country and another from the exporting country. In general, a permit cannot be issued unless both countries find that the transportation will not be to the detriment of the survival of the species in the wild.

The Convention's controls serve to monitor the volume of traffic in appendix II species. Export permits must be issued from the country of origin for these species, but import permits are not required.

Although the Endangered Species Convention represents a major step forward in the effort to reduce the rate of species extinction worldwide, it cannot, by itself, eliminate the international traffic in endangered species. A significant problem with the Convention is that only 44 countries have ratified it. Thus, unhindered trade in endangered species can continue between all the nations that are not signatories to the Convention. An even larger problem is the increasing incidence of counterfeited permits and smuggling.

H.R. 10878 would strengthen the Endangered Species Convention by providing the President with the authority to encourage other nations to comply with the Convention. Section 2 of H.R. 10878 was drafted after consulting with representatives of both the Department of the Interior and the Department of Commerce. The section has been drafted to provide the President with sufficient flexibility to decide whether an embargo of wildlife products from the offending nation is in the United States' interest. Although the Secretaries' duties under the amendment are mandatory, the President, once a finding has been made, has complete flexibility to embargo all, some, or no wildlife products from the offending nation.

H.R. 10878 would provide the President with the authority to embargo only wildlife products from the offending nation. He could not decide to embargo other products even if the Secretary found that the offending country was diminishing the effectiveness of the Convention.

H.R. 10878 would provide the President with the authority to encovered by the Pelly amendment could not be embargoed if the Secretary finds that the nation in question is diminishing the effectiveness of an international endangered species conservation program. Finally, the legislation explicitly exempts from any embargo those wildlife products which are specifically imported for scientific research purposes. Thus, the flow of animals to this country for scientific and biomedical research would not be impeded by this legislation.

SECTION 10

Section 201 of the Fishery Conservation and Management Act of 1976 (Public Law 94–265) contains a strong statement of congressional intent that each foreign nation which desires to fish within the 200-mile fishery zone of the United States shall assume responsibility, in accordance with any requirements prescribed by the Secretary of Commerce, for the reimbursement of U.S. citizens who have suffered any loss of, or damage to, their fishing vessels, fishing gear, or catch which is caused by any fishing vessel of that nation. When this legislation was enacted, it was intended that the Secretary of Commerce would establish a simple and effective administrative mechanism for adjudicating damage claims filed by U.S. fishermen. This intent has not been effectuated.

Pursuant to the Governing International Fishery Agreements negotiated under Public Law 94–265, the United States has established three U.S.-foreign claims boards for the purpose of processing damage claims. The existing boards are with Russia, Poland, and Spain. Each board is composed of four members—two appointed by the United

States and two appointed by the foreign nation. Decisions of the board must be made by a unanimous vote.

Two of these boards, namely, the Russian and Polish, existed prior to the enactment of Public Law 94-265, and the experience of U.S. fishermen with these boards was generally unsatisfactory. The time required for the processing of damage claims was lengthy, averaging 3 months. For a U.S. fisherman to win a damage claim, he had to establish that a Russian or Polish vessel was the cause of the damage to the vessel or gear involved. U.S. fixed gear fishermen, who set their gear on one day and return a few days later to check the gear, were often unable to meet this burden of proof. U.S. long-line fishermen often suffer the same problem in that gear stretching 15 miles behind the vessel might be severed at the 12th mile by a vessel that could be identified by radar but which could not be identified as to its nationality. As a result of these problems, relatively few U.S. fishermen were able to secure adequate compensation from the claims boards. The following chart which shows the disposition of gear damage claims submitted to the boards in 1975, 1976, and 1977 graphically illustrates this problem:

CLAIMS SUBMITTED TO CLAIMS BOARDS

Vessel	Area	Country charged	Alleged gear damage	Amount	Settlement status
1977					
Carol Ann	Alaska	U.S.S.R.	King crab pots	$4,145.14	(1)
Miss Julie II	Massachusetts	U.S.S.R.	Lobster pots	28,116.45	(1)
1976					
Donna Marie	do	U.S.S.R.	do	22,695.00	(1)
Queen	do	U.S.S.R.	do	22,402.43	$3,623.90
Prelude	Rhode Island	U.S.S.R.	do	9,097.50	(2)
Donna Marie	Massachusetts	U.S.S.R.	do	10,030.00	(2)
1975					
Mary Lou	New Jersey	Poland	do	10,113.25	0
Ranger	do	do	do	5,141.70	0
Fair Wind	Massachusetts	U.S.S.R.	do	49,012.00	6,987.64
Mars	do	U.S.S.R.	do	15,106.76	2,500.00
Sea King	Rhode Island	U.S.S.R.	do	14,560.00	0
Sujener	do	U.S.S.R.	do	33,000.00	6,226.07
Two Jims	Massachusetts	U.S.S.R.	do	9,337.00	0
Do	do	U.S.S.R.	do	29,259.00	12,430.00
Kristin & Michael	Rhode Island	U.S.S.R.	do	51,203.76	0
Palombo I	Massachusetts	U.S.S.R.	do	42,282.50	0
Horizan	do	U.S.S.R.	do	22,856.35	3,693.59
Dolphin	do	U.S.S.R.	do	5,686.82	0
Elsie E	New Jersey	U.S.S.R.	do	20,530.50	0
April Ann	do	U.S.S.R.	do	13,967.80	0
Ranger	do	U.S.S.R.	do	7,709.30	2,854.50
Mary Lou	do	U.S.S.R.	do	27,935.65	0
Do	do	U.S.S.R.	do	10,113.25	5,709.00
Ranger	do	U.S.S.R.	do	5,141.70	2,854.00
Catherine Ann	Massachusetts	U.S.S.R.	do	116,213.78	12,222.51
Queen	do	U.S.S.R.	do	9,507.40	3,172.80
Do	do	U.S.S.R.	do	15,970.90	0
Newsboy	do	U.S.S.R.	do	9,000.00	0
Sara	do	U.S.S.R.	do	43,662.30	0
Yankee Clipper	Rhode Island	U.S.S.R.	do	25,087.97	0
Resolve	do	U.S.S.R.	do	40,314.00	0
Homarus I & II	Massachusetts	U.S.S.R.	do	85,626.00	8,400.00
Skipjack	California	U.S.S.R.	Fish traps	41,678.11	6,900.00
Corsair	Massachusetts	U.S.S.R.	Lobster pots	10,540.00	7,500.00
Bergen	Washington	U.S.S.R.	Longline	1,099.38	970.00
Jocelyn C	Massachusetts	U.S.S.R.	Lobster pots	34,000.00	(3)
Iron Horse	Rhode Island	U.S.S.R.	do	112,842.14	(4)

[1] Under review.
[2] Submitted beyond filing period.
[3] Submitted after filing period.
[4] In arbitration.

In December 1977 the National Marine Fisheries Service established a second procedure by which U.S. fishermen suffering damage to their fishing vessels or gear caused by the activities of foreign fishing vessels could secure compensation. Under this new procedure a U.S. fisherman could submit his damage claim to compulsory and binding arbitration if the amount of the claim is less than $25,000. The arbitration is to be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

The new regulations also fail to provide an effective mechanism for compensating U.S. fishermen primarily because the claimant will have the burden of proving that the damages to his fishing vessel or gear were, in fact, caused by the specific foreign vessel against which the claim is being made. As has been the case with the claims boards, many U.S. fishermen will be unable to meet this burden of proof and, therefore, their claims will remain uncompensated.

In addition to this problem, the Commercial Arbitration Rules contain certain procedural problems. For example, the Rules provide that where the nationals of more than one nation are involved in the arbitration proceeding, the arbitrator will, at the request of either party, be from a third nation. Thus, it is entirely possible that all arbitration proceedings required by a U.S. fisherman will be decided by the national of a third nation. Further, the U.S. fisherman requesting the arbitration may be required to pay for the cost of that arbitration. Finally, the regulations require that if the U.S. fisherman requests a stenographer or interpreter during the proceedings, he must pay for the cost of those services.

It should also be noted that the arbitration proceedings are not available for claims in excess of $25,000. This is particularly significant in light of the fact that of the 10 nations currently fishing within the U.S. 200-mile fishery zone, claims boards have been established with only three.

Public Law 95-194 added a new section to the Fisherman's Protective Act to establish a third system for compensating U.S. fishermen for damages to their vessels or gear caused by the activities of foreign fishing vessels. Section 10 provides for 3½ percent loans to be made to U.S. fishermen who have, in fact, suffered such damage. Unfortunately, this legislation may not be fully responsible to the needs of U.S. fishermen. Pursuant to section 10, the Secretary may not compensate any U.S. fisherman unless the Secretary determines that the damage to the fishing vessel or its gear was caused by a foreign fishing vessel operating within the U.S. zone. Thus, unless the U.S. fisherman can establish the identity of the vessel causing the damage, he will be unable to secure any compensation under this program. The burden of proof associated with this program is identical to that which has plagued the claims boards, and which will impede the successful operation of the arbitration procedures.

If the damages suffered by a U.S. fisherman amount to less than $2,000, Public Law 95-194 provides that the U.S. fisherman may not secure any compensation. Furthermore, the manner in which the value of the $2,000 deductible is to be computed is not stated. Thus, it is unknown whether the replacement value or the depreciated value of the equipment is to be used.

If the U.S. fisherman's damages amount to more than $2,000, he may be compensated for the value of such damages. However, Section 10 fails to specify whether the U.S. fisherman is to be compensated for the replacement value or the depreciated value of the vessel or gear which has been damaged or lost. In addition, the Act fails to specify the maturity of the loan.

Section 10 provides that if the U.S. fisherman was at fault, he shall, within a reasonable period, repay the amount of any loan awarded under this program. If the U.S. fisherman was contributorily negligent, regardless of the degree of his negligence, he may be unable to secure compensation for his damages under this program. In addition, the statute is unclear as to what action is to be taken if it cannot be determined whether the U.S. fisherman is, in fact, at fault.

Finally, there is no procedure contained in the statute which will enable the Secretary to verify the value of the equipment involved. For example, the Secretary does not have the authority to require fishermen to maintain an inventory of equipment.

In view of the difficulties associated with the existing procedures for compensating U.S. fishermen for damages to their gear caused by the activities of foreign fishing vessels, the committee adopted an amendment which would repeal section 10 and establish a modified no-fault system of compensation for U.S. fishermen whose fishing gear has been lost, damaged, or destroyed.

What the Bill Does: Section-by-Section Analysis

As indicated in the legislative background of this report, the committee ordered reported to the House, H.R. 10878 with amendments. The amendments were accomplished by striking out all after the enacting clause and substituting new language and by amending the bill.

There follows a section-by-section summary of H.R. 10878, accompanied by discussion where appropriate.

SECTION 1

Section 7(e) of the Fishermen's Protective Act provides that the provisions of section 7 (cooperative insurance program) shall be effective until October 1, 1978. Section 1 of the bill would amend section 7(e) of the Act to extend the provisions of section 7 for an additional three years, until October 1, 1981.

SECTION 2

Under existing law, section 8(a) of the act provides that whenever the Secretary of Commerce determines that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program, the Secretary of Commerce is required to certify such fact to the President. Under receipt of such certification, the President may direct the Secretary of the Treasury to prohibit the bringing or importation into the United States of fish products of the offending country for such duration as he determines appropriate and to the extent that such prohibition is sanctioned by the General Agreement in Tariffs and Trade (GATT).

Paragraph (1) of section 2 would amend section 8(a) of the act to add a new paragraph (2) to such subsection to authorize the President to embargo wildlife products whenever the Secretary of Commerce or the Secretary of the Interior finds that nationals of a foreign country, directly or indirectly, are engaging in trade or taking which diminishes the effectiveness of an international program for endangered or threatened species and the Secretary making such finding certifies such fact to the President. This paragraph makes it clear that the Secretaries' duties are mandatory, once an affirmative finding has been made. When the appropiate Secretary makes such a funding, he must certify that fact to the President.

The nature of any trade or taking which qualifies as diminishing the effectiveness of any international program for endangered or threatened species will depend on the circumstances of each case. In general, however, the trade or taking must be serious enough to warrant the finding that the effectiveness of the international program in question has been diminished. An isolated, individual violation of a convention provision will not ordinarily warrant certification under this section.

Paragraph (1) of section 2 would also amend section 8(a) of the act to add a new paragraph (3) to such subsection to provide that upon receipt of any certification by the Secretary of the Interior or the Secretary of Commerce, the President may direct the Secretary of the Treasury to prohibit the importation of wildlife products from the offending nation. It should be noted that the President is not required to direct an embargo; he has the option of deciding to embargo all wildlife products, some wildlife products or none at all. The language of the amendment is intended to give the President the maximum flexibility he needs to respond to national and international concerns.

Paragraph 2 of section 2 makes conforming changes in section 8(b). *Section 8(b)* of the Act specifies that the President must notify the Congress of any action taken pursuant to certification under this section within 60 days of the certification. Should the President fail to embargo wildlife products of the offending country after such certification, he must inform the Congress of his reasons for not employing an embargo.

Paragraph 3 of section 2 makes conforming changes in section 8(c) of the act. Section 8(c) of the act provides that it is unlawful for any person subject to the jurisdiction of the United States to knowingly import embargoed fish products. This amendment would provide that it is unlawful to knowingly import wildlife products as well.

Paragraph 4 of section 2 makes conforming changes in section 8(d)(2)) of the act. Section 8(d)(2) of the act provides that any fish products imported into the country in violation of this section are subject to forfeiture. This amendment would subject illegally imported wildlife products to forfeiture as well.

Paragraph 5 of section 2 makes conforming changes in section 8(e) of the act. Section 8(e)(1) provides that the Secretary of the Treasury has enforcement responsibility. Section 8(e)(4)(B) provides that an authorized person has authority with or without a warrant, to search any vessel subject to the jurisdiction of the United States and, if as a result of such search he has reasonable grounds to believe that the

vessel, or any person on board the vessel, is violating this section, to arrest such person. This amendment would subject conveyances, other than vessels, to searches by authorized persons.

Section 8(e)(5) of the act provides that authorized persons may seize fish products imported into the United States in violation of this section. This amendment would authorize such persons to seize wildlife products imported in violation of this section. This amendment also authorizes the disposal of wildlife products illegally imported into the United States in violation of this section.

Paragraph 6 of section 2 amends section 8(f) of the act to authorize, in addition to the Secretary of the Treasury, the Secretaries of Commerce and the Interior to prescribe regulations to carry out the act.

Paragraph 7 of section 2 amends section 8(g) of the act to define an 'international fishery conservation program' *to be* any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States. The language of the existing law defines an "international fishery conservation program" as a ban, restriction, regulation, or other measure in force pursuant to a multilateral treaty to which the United States is a signatory party.

Paragraph 7 of section 2 also adds at the end of section 8(g) of the act a new paragraph (5) which defines the term "international program for endangered or threatened species" to mean any ban, restriction, regulation, or other measure in effect pursuant to a multilateral agreement which is in force with respect to the United States, the purpose of which is to protect endangered or threatened species of animals. This definition would have the effect of including the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere, and other qualifying multilateral agreements.

In addition, paragraph 7 of section 2 adds at the end of section 8(g) a new subsection (6) which defines "wildlife products" to mean fish and wild animals, and parts thereof, taken within an offending country. The definition also includes all products of any such fish or wild animals whether or not such products are packed, processed, or otherwise prepared for export in the offending country. The definition specifically excludes fish or wild animals specifically imported for scientific research.

The definition of "wildlife products" also excludes fish that are already covered under the definition of "fish products" in the existing law. The effect of this exclusion is to prevent the embargoing of fish products, already covered by this section from a country which has been certified as diminishing the effectiveness of an international program for endangered or threatened species.

Finally, paragraph 7 of section 2 adds at the end of section 8(g) of the act a new subsection (7) which defines "taking" as used in subsection (a)(2) of this section to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct with respect to animals to which an international program for endangered or threatened species applies. This paragraph also defines "taking," as used in the definition of "wildlife products" to mean any conduct which diminishes the effectiveness of an international program for endangered or threatened species whether or not such conduct is legal under the laws of the offending country.

Section 3(a) of the bill adds a new section 10 to the Fishermen's Protective Act.

New section 10(a) defines the terms used in the section. The terms "fishery conservation zone," "fishing," "fishing vessel," and "vessel of the United States" shall each have the same respective meaning as are given to such terms in the Fishery Conservation and Management Act of 1976 (FCMA).

The terms are defined in the FCMA as follows: "Fishery Conservation Zone" means a zone contiguous to the territorial sea of the United States which has as its inner boundary a line coterminous with the seaward boundary of each of the coastal States and the outer boundary a line drawn in such a manner that each point is 200 nautical miles from the baseline from which the territorial sea is measured. "Fishing" means the catching, taking, or harvesting of fish; the attempted catching, taking or harvesting of fish; any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or any operations at sea in support of, or in preparation for, any of such activities. "Fishing vessel" means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for, fishing; or aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply, shortage, refrigeration, transportation or processing. "Vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.

The term "fishing gear" means any equipment or appurtenance which is necessary for the carrying out of fishing operations, whether or not such equipment or appurtenance is attached to the vessel, and the term "fund means the Fishery Gear Damage Compensation Fund established under subsection (g).

New section 10(b) provides that the owner or operator (hereinafter referred to as the vessel owner) of any fishing vessel which is a U.S. vessel is eligible for compensation for any damage to, loss of, or destruction of any fishing gear used with such vessel if the damage, loss, or destruction occurs when the vessel is engaging in fishing within the U.S. 200-mile zone and is attributable to any other vessel (whether or not a vessel of the United States) or an act of God. The purpose of this language is to overcome the requirement under existing systems of compensation that the claimant be able to establish the identity of the foreign vessel causing the damage.

The vessel owner, pursuant to new section 10(c), is not eligible for any compensation unless he is not in default with respect to contributions required of him under subsection (e) and is in compliance with all regulations prescribed by the Secretary, including regulations requiring that he have a current inventory of his gear on file with the Secretary and that he has complied with all applicable requirements relating to the marking of, and notification of the location of, the gear concerned.

New section 10(d)(1) requires participating vessel owners applying for compensation to meet the documentation and evidence requirements relating to the cause and extent of the damage, loss, or destruc-

tion claimed as the Secretary may prescribe by regulation. The Secretary is required to issue an initial determination on any submitted application for compensation within 30 days of receipt of such application.

New section 10(d)(2) provides that the amount of any compensation awarded to any vessel owner shall be; (1) determined on the basis of the depreciated value of the fishing gear concerned; (2) proportionately reduced to the extent that evidence indicates that negligence by the vessel owner contributed to the cause or extent of the damage, loss, or destruction; and (3) reduced by the amount of compensation, if any, which the vessel owner has received or will receive through insurance or pursuant to any other provision of law.

New section 10(d)(3) requires the Secretary, when making his initial determination, to set forth his reasons if the application is disapproved and, if the application is approved, to set forth the amount of compensation to which the applicant is entitled and the basis on which such amount was determined.

New section 10(d)(4) authorizes any vessel owner who is aggrieved by any decision of the Secretary, within 30 days after the issuance of his initial determination to petition the Secretary for a review of the decision. If a petition for review is not filed within the 30-day period, the initial determination is deemed to be the final determination on the application.

New section 10(d)(5) requires the Secretary to pay from the fund the amount of compensation stated in the final determination. Upon such payment, the United States is subrogated to the rights of the vessel owner.

New section 10(e) provides that for each year after 1978 the Secretary shall establish annual contributions which must be paid by any owner of a U.S. vessel desiring to participate in the program as a condition of eligibility for compensation. Contributions to be paid by such owners shall be equal to the cost of administering this section plus 20 percent of the estimated amount of compensation which will be paid during the year divided by the estimated number of vessel owners who will participate in the program during that year.

New section 10(f) provides that beginning with calendar year 1979 no foreign fishing vessel shall be issued a permit under the FCMA for fishing within the U.S. 200-mile fishery zone unless that vessel has paid to the Secretary the damage assessment established for such year. The damage assessment shall be an amount equal to 80 percent of the estimated compensation which will be paid under this Act divided by the number of foreign fishing vessels operating within the U.S. 200-mile fishery zone.

New section 10(g) provides for the establishment of a Fishing Gear Damage Compensation Fund. This fund shall consist of all contributions and damage assessments which have been levied under this section, all sums recovered by the United States by virtue of its rights as a subrogee, all revenues received from deposits or investments made with monies in the fund, and any sums appropriated to the fund. If at any time the amount in the fund is not sufficient to pay compensation under this section, the Secretary is authorized to issue, in an amount not to exceed $5 million, notes or other obligations to the Secretary of the Treasury.

New section 10(h) provides that any person who willfully makes any false or misleading statement for the purpose of obtaining compensation shall be punished by a fine of not more than $10,000 or by imprisonment for not more than one year, or both.

New section 10(i) authorizes the appropriation of such sums as may be necessary to meet the requirements of the Fund.

Section 3(b) provides that new section 10 shall take effect on October 1, 1978.

Cost of the Legislation

In the event this legislation is enacted into law, the committee estimates (after comparing and analyzing the information supplied by the Government agencies and their representatives and the Congressional Budget Office) that there would be no cost to the Federal Government, other than minimal administrative costs, for the current fiscal year and for the next 5 succeeding fiscal years.

Inflationary Impact Statement

Pursuant to clause 2(l) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 10878 would have no significant inflationary impact on the prices and cost in the national economy.

Compliance With Clause 2(l)(3) of Rule XI

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives—

(A) No oversight hearings were held on the administration of this Act during this Session of this Congress other than the one day of hearings held on the legislation by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on February 27, 1978. However, the Subcommittee held hearings during the first session of this Congress on March 3, 1977, on legislation to extend section 7 of the Act for one additional year. The Subcommittee intends to hold oversight hearings on the administration of this Act during the 96th Congress.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Government Operations has sent no report to the Committee on Merchant Marine and Fisheries pursuant to clause 2(b)(2) of Rule X.

(D) A letter was received from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974 in reference to H.R. 10878, and follows herewith:

Congressional Budget Office,
U.S. Congress,
Washington, D.C., March 20, 1978.

Hon. John M. Murphy,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

Dear Mr. Chairman: Pursuant to section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed

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H.R. 10878, a bill to extend until October 1, 1981, the voluntary insurance program provided by section 7 of the Fishermen's Protective Act of 1967, as ordered reported by the Committee on Merchant Marine and Fisheries, March 16, 1978.

Based on this review, it appears that no significant cost to the government would be incurred as a result of enactment of this bill.

Sincerely,

ALICE M. RIVLIN, *Director.*

DEPARTMENTAL REPORTS

No departmental reports were received on the legislation.

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AIR FORCE—LIEUTENANT COLONEL AND COLONEL—AUTHORIZED NUMBERS

P.L. 95-377, see page 92 Stat. 719

Senate Report (Armed Services Committee) No. 95-1144, Aug. 23, 1978 [To accompany S. 3454]

Cong. Record Vol. 124 (1978)

DATES OF CONSIDERATION AND PASSAGE

Senate September 7, 1978

House September 12, 1978

No House Report was submitted with this legislation.

SENATE REPORT NO. 95-1144

[page 1]

The Committee on Armed Services, having had under consideration the question of an extension of authorized grades in the Air Force and other personnel items, reports the following bill (S. 3454) to amend the Act of August 29, 1974 (88 Stat. 795; 10 U.S.C. 8202 note), relating to the authorized numbers for the grades of lieutenant colonel and colonel in the Air Force and to authorize the President to suspend certain provisions of law when he determines that the needs of the Armed Forces so require, and for other purposes.

FORM OF COMMITTEE ACTION

The administration has submitted several legislative proposals related to the extension of authorized grades for the Air Force and relating to several current personnel practices that would lapse under the provisions of the National Emergencies Act of 1976 (Public Law 94-412). Many of these personnel procedures and many other pro-

visions not involving these procedures are included in another bill, H.R. 5503, on which hearings were held but on which action has not been completed. These circumstances made it desirable to report an original bill.

COMMITTEE BILL

The bill provides for the following:

1. Extending the authorization of an increase for 1 year in the number of Air Force colonels and lieutenant colonels provided under 10 U.S.C. 8202(a). This would be effected by extending for 1 year, Public Law 93-397, which expires on September 30, 1978.

[page 2]

2. Authority for the President to suspend the application of certain provisions in law through September 30, 1979, when he determines that the needs of the Armed Forces so require. The application of these provisions is now suspended. Suspending these provisions of law for another year would maintain current personnel practices for the military in these areas.

3. Extending authority for 1 year to allow spot promotions of certain Navy lieutenants, below the zone prorotion for Navy limited duty officers, and to allow temporary Marine Corps major generals to sit on Major General Selection Boards.

AIR FORCE GRADE EXTENSION

The bill would provide authority for 1 more year for the number of Air Force colonels and lieutenant colonels currently authorized by Public Law 93-397 which expires on September 30, 1978. Public Law 93-397 authorizes an increase in the number of colonels and lieutenant colonels serving on active duty in the Air Force above the permanent authorization of 10 U.S.C. 8202. The number of authorized colonels and lieutenant colonels is based on the total officer strength of the Air Force.

The temporary extension of this authority should allow the Air Force to adequately man its officer force and to maintain predictable promotion patterns for commissioned officers pending enactment of permanent legislation. Failure to enact legislation extending this authority would mean that the number of officers allowed to serve in the field grades would be based upon the table established in permanent law by the Officer Grade Limitation Act (OGLA) of 1954, substantially below current strengths.

The extension of the authority will permit the Air Force to promote officers for the next year to the grade of major, lieutenant colonel, and colonel at about the same career points and with approximately the same percentage of promotion opportunity as has been the case in the recent past and as is comparable to the Army and Navy.

BACKGROUND ON THE AIR FORCE FIELD GRADE OFFICER PROBLEM

The original Officer Grade Limitation Act (OGLA), which placed limits on the number of field grade officers in the Armed Services, was passed in 1954. At that time, the Air Force was a comparatively younger branch of the Armed Services and thus needed fewer grade authorizations to provide adequate career progression. Aware of this

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AUTHORIZATION, APPROPRIATIONS—FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976

An Act to authorize appropriations to carry out the Fishery Conservation and Management Act of 1976 during fiscal years 1980, 1981, and 1982, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 406 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1882) is amended by inserting at the end thereof the following:

Fishery Conservation and Management Act of 1976, amendment.

"(6) $33,000,000 for the fiscal year ending September 30, 1980.

"(7) $40,000,000 for the fiscal year ending September 30, 1981.

"(8) $47,000,000 for the fiscal year ending September 30, 1982.".

Appropriation authorization.

SEC. 2. Section 4311(a) of the Revised Statutes of the United States (46 U.S.C. 251(a)) is amended by adding at the end thereof the following new sentence: "For the purposes of this subsection, the term 'fisheries' shall include the planting, cultivation, catching, taking, or harvesting of fish, shellfish, marine animals, pearls, shells, or marine vegetation at any place within the fishery conservation zone established by section 101 of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1811).".

"Fisheries."

SEC. 3. (a) Section 201(e) of the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (1) through (4) as subparagraphs (A) and (D), respectively;

(2) by inserting "(1)" immediately after "ALLOCATION OF ALLOWABLE LEVEL.—"; and

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

"(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)).

"Certification."

"(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.

"Remedial period."

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

Allocation, reduction.

"(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.

Reallocation.

"(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.

22 USC 1978.

"(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.

16 USC 1824.

"(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 harvested portion of such allocation; and

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

(b) Section 8 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1978) is amended—

(1) by amending subsection (a) by redesignating paragraph (3) as paragraph (4), and by inserting immediately after paragraph (2) the following new paragraph:

"(3) In administering this subsection, the Secretary of Commerce or the Secretary of the Interior, as appropriate, shall—

"(A) periodically monitor the activities of foreign nationals that may affect the international programs referred to in paragraphs (1) and (2);

"(B) promptly investigate any activity by foreign nationals that, in the opinion of the Secretary, may be cause for certification under paragraph (1) or (2); and

"(C) promptly conclude; and reach a decision with respect to; any investigation commenced under subparagraph (B).".

(2) by redesignating subsections (d) through (g) as subsections (e) through (h), respectively; and

(3) by adding immediately after subsection (c) the following new subsection:

"(d) After making a certification to the President under subsection (a), the Secretary of Commerce or the Secretary of the Interior, as the case may be, shall periodically review the activities of the nationals of the offending country to determine if the reasons for which the

certification was made no longer prevail. Upon determining that such reasons no longer prevail, the Secretary concerned shall terminate the certification and publish notice thereof, together with a statement of the facts on which such determination is based, in the Federal Register.". Publication in Federal Register.

SEC. 4. Notwithstanding the provisions of section 4132 of the Revised Statutes of the United States (46 U.S.C. 11), or any other provision of law, the Secretary of the department in which the United States Coast Guard is operating shall cause the vessel Widow Maker, owned by Strohe Brothers of Lake Charles, Louisiana, to be documented as a vessel of the United States, upon compliance with the usual requirements, with the privilege of engaging in the coastwide trade and the fisheries so long as such vessel is owned by a citizen of the United States. *Widow Maker*, documentation.

Approved August 15, 1979.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 96-170 accompanying H.R. 1798 (Comm. on Merchant Marine and Fisheries).
SENATE REPORT No. 96-72 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 125 (1979):
Apr. 30, considered and passed Senate.
June 25, H.R. 1798 considered and passed House; passage vacated and S. 917, amended, passed in lieu.
Aug. 1, Senate concurred in House amendment; action vitiated and Senate concurred in House amendment with an amendment.
Aug. 2, House concurred in Senate amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 15, No. 33:
Aug. 15, Presidential statement.

7. vii. 87

Nick — 17

Per your request:

TIAS 1849, pp. 248-258,
International Whaling
Convention December 2, 1946.

GH

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TREATIES AND OTHER INTERNATIONAL AGREEMENTS OF THE UNITED STATES OF AMERICA 1776–1949

Compiled under the direction of

CHARLES I. BEVANS, LL. B.

Assistant Legal Adviser, Department of State

Volume 4

MULTILATERAL

1946–1949

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REGULATION OF WHALING

Convention signed at Washington December 2, 1946, with schedule of regulations
Senate advice and consent to ratification July 2, 1947
Ratified by the President of the United States July 18, 1947
Ratification of the United States deposited at Washington July 18, 1947
Entered into force November 10, 1948
Proclaimed by the President of the United States November 19, 1948
Convention amended by protocol of November 19, 1956 [1]
Schedule amended June 7, 1949,[2] *July 21, 1950,*[3] *July 27, 1951,*[4] *June 6, 1952,*[5] *June 26, 1953,*[6] *July 23, 1954,*[7] *July 23, 1955,*[8] *July 16–20, 1956,*[9] *June 28, 1957,*[10] *June 23–27, 1958,*[11] *June 22–July 1, 1959,*[12] *June 24, 1960,*[13] *June 23, 1961,*[14] *July 6, 1962,*[15] *July 5, 1963,*[16] *June 26, 1964,*[17] *July 2, 1965,*[18] *July 1, 1966,*[19] *June 30, 1967,*[20] *and June 24–28, 1968* [21]

62 Stat. 1716; Treaties and Other International Acts Series 1849

International Convention for the Regulation of Whaling

The Governments whose duly authorized representatives have subscribed hereto,

Recognizing the interest of the nations of the world in safeguarding for future generations the great natural resources represented by the whale stocks;

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[1] 10 UST 952; TIAS 4228.
[2] 1 UST 506; TIAS 2092.
[3] 2 UST 11; TIAS 2173.
[4] 3 UST 2999; TIAS 2486.
[5] 3 UST 5094; TIAS 2699.
[6] 4 UST 2179; TIAS 2866.
[7] 6 UST 645; TIAS 3198.
[8] 7 UST 657; TIAS 3548.
[9] 8 UST 69; TIAS 3739.
[10] 8 UST 2203; TIAS 3944.
[11] 10 UST 330; TIAS 4193.
[12] 11 UST 32; TIAS 4404.
[13] 13 UST 493; TIAS 5014.
[14] 13 UST 497; TIAS 5015.
[15] 14 UST 112; TIAS 5277.
[16] 14 UST 1690; TIAS 5472.
[17] 15 UST 2547; TIAS 5745.
[18] 17 UST 35; TIAS 5953.
[19] 17 UST 1640; TIAS 6120.
[20] 18 UST 2391; TIAS 6345.
[21] 19 UST 6030; TIAS 6562.

Considering that the history of whaling has seen overfishing of one area after another and of one species of whale after another to such a degree that it is essential to protect all species of whales from further overfishing;

Recognizing that the whale stocks are susceptible of natural increases if whaling is properly regulated, and that increases in the size of whale stocks will permit increases in the numbers of whales which may be captured without endangering these natural resources;

Recognizing that it is in the common interest to achieve the optimum level of whale stocks as rapidly as possible without causing widespread economic and nutritional distress;

Recognizing that in the course of achieving these objectives, whaling operations should be confined to those species best able to sustain exploitation in order to give an interval for recovery to certain species of whales now depleted in numbers;

Desiring to establish a system of international regulation for the whale fisheries to ensure proper and effective conservation and development of whale stocks on the basis of the principles embodied in the provisions of the International Agreement for the Regulation of Whaling signed in London on June 8, 1937 [22] and the protocols to that Agreement signed in London on June 24, 1938 [23] and November 26, 1945; [24] and

Having decided to conclude a convention to provide for the proper conservation of whale stocks and thus make possible the orderly development of the whaling industry;

Have agreed as follows:

Article I

1. This Convention includes the Schedule attached thereto which forms an integral part thereof. All references to "Convention" shall be understood as including the said Schedule either in its present terms or as amended in accordance with the provisions of Article V.

2. This Convention applies to factory ships, land stations, and whale catchers under the jurisdiction of the Contracting Governments, and to all waters in which whaling is prosecuted by such factory ships, land stations, and whale catchers.

Article II

As used in this Convention

1. "factory ship" means a ship in which or on which whales are treated whether wholly or in part;

2. "land station" means a factory on the land at which whales are treated whether wholly or in part;

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[22] TS 933, *ante*, vol. 3, p. 455.
[23] TS 944, *ante*, vol. 3, p. 519.
[24] TIAS 1597, *ante*, vol. 3, p. 1328.

3. "whale catcher" means a ship used for the purpose of hunting, taking, towing, holding on to, or scouting for whales;

4. "Contracting Government" means any Government which has deposited an instrument of ratification or has given notice of adherence to this Convention.

Article III

1. The Contracting Governments agree to establish an International Whaling Commission, hereinafter referred to as the Commission, to be composed of one member from each Contracting Government. Each member shall have one vote and may be accompanied by one or more experts and advisers.

2. The Commission shall elect from its own members a Chairman and Vice Chairman and shall determine its own Rules of Procedure. Decisions of the Commission shall be taken by a simple majority of those members voting except that a three-fourths majority of those members voting shall be required for action in pursuance of Article V. The Rules of Procedure may provide for decisions otherwise than at meetings of the Commission.

3. The Commission may appoint its own Secretary and staff.

4. The Commission may set up, from among its own members and experts or advisers, such committees as it considers desirable to perform such functions as it may authorize.

5. The expenses of each member of the Commission and of his experts and advisers shall be determined and paid by his own Government.

6. Recognizing that specialized agencies related to the United Nations will be concerned with the conservation and development of whale fisheries and the products arising therefrom and desiring to avoid duplication of functions, the Contracting Governments will consult among themselves within two years after the coming into force of this Convention to decide whether the Commission shall be brought within the framework of a specialized agency related to the United Nations.

7. In the meantime the Government of the United Kingdom of Great Britain and Northern Ireland shall arrange, in consultation with the other Contracting Governments, to convene the first meeting of the Commission, and shall initiate the consultation referred to in paragraph 6 above.

8. Subsequent meetings of the Commission shall be convened as the Commission may determine.

Article IV

1. The Commission may either in collaboration with or through independent agencies of the Contracting Governments or other public or private agencies, establishments, or organizations, or independently

(a) encourage, recommend, or if necessary, organize studies and investigations relating to whales and whaling;

(b) collect and analyze statistical information concerning the current condition and trend of the whale stocks and the effects of whaling activities thereon;

(c) study, appraise, and disseminate information concerning methods of maintaining and increasing the populations of whale stocks.

2. The Commission shall arrange for the publication of reports of its activities, and it may publish independently or in collaboration with the International Bureau for Whaling Statistics at Sandefjord in Norway and other organizations and agencies such reports as it deems appropriate, as well as statistical, scientific, and other pertinent information relating to whales and whaling.

Article V

1. The Commission may amend from time to time the provisions of the Schedule by adopting regulations with respect to the conservation and utilization of whale resources, fixing (a) protected and unprotected species; (b) open and closed seasons; (c) open and closed waters, including the designation of sanctuary areas; (d) size limits for each species; (e) time, methods, and intensity of whaling (including the maximum catch of whales to be taken in any one season); (f) types and specifications of gear and apparatus and appliances which may be used; (g) methods of measurement; and (h) catch returns and other statistical and biological records.

2. These amendments of the Schedule (a) shall be such as are necessary to carry out the objectives and purposes of this Convention and to provide for the conservation, development, and optimum utilization of the whale resources; (b) shall be based on scientific findings; (c) shall not involve restrictions on the number or nationality of factory ships or land stations, nor allocate specific quotas to any factory ship or land station or to any group of factory ships or land stations; and (d) shall take into consideration the interests of the consumers of whale products and the whaling industry.

3. Each of such amendments shall become effective with respect to the Contracting Governments ninety days following notification of the amendment by the Commission to each of the Contracting Governments, except that (a) if any Government presents to the Commission objection to any amendment prior to the expiration of this ninety-day period, the amendment shall not become effective with respect to any of the Governments for an additional ninety days; (b) thereupon, any other Contracting Government may present objection to the amendment at any time prior to the expiration of the additional ninety-day period, or before the expiration of thirty days from the date of receipt of the last objection received during such additional ninety-day period, whichever date shall be later; and (c) thereafter, the amendment shall become effective with respect to all Contracting

Governments which have not presented objection but shall not become effective with respect to any Government which has so objected until such date as the objection is withdrawn. The Commission shall notify each Contracting Government immediately upon receipt of each objection and withdrawal and each Contracting Government shall acknowledge receipt of all notifications of amendments, objections, and withdrawals.

4. No amendments shall become effective before July 1, 1949.

Article VI

The Commission may from time to time make recommendations to any or all Contracting Governments on any matters which relate to whales or whaling and to the objectives and purposes of this Convention.

Article VII

The Contracting Governments shall ensure prompt transmission to the International Bureau for Whaling Statistics at Sandefjord in Norway, or to such other body as the Commission may designate, of notifications and statistical and other information required by this Convention in such form and manner as may be prescribed by the Commission.

Article VIII

1. Notwithstanding anything contained in this Convention, any Contracting Government may grant to any of its nationals a special permit authorizing that national to kill, take, and treat whales for purposes of scientific research subject to such restrictions as to number and subject to such other conditions as the Contracting Government thinks fit, and the killing, taking, and treating of whales in accordance with the provisions of this Article shall be exempt from the operation of this Convention. Each Contracting Government shall report at once to the Commission all such authorizations which it has granted. Each Contracting Government may at any time revoke any such special permit which it has granted.

2. Any whales taken under these special permits shall so far as practicable be processed and the proceeds shall be dealt with in accordance with directions issued by the Government by which the permit was granted.

3. Each Contracting Government shall transmit to such body as may be designated by the Commission, insofar as practicable, and at intervals of not more than one year, scientific information available to that Government with respect to whales and whaling, including the results of research conducted pursuant to paragraph 1 of this Article and to Article IV.

4. Recognizing that continuous collection and analysis of biological data in connection with the operations of factory ships and land stations are indispensable to sound and constructive management of the whale fisheries, the

Contracting Governments will take all practicable measures to obtain such data.

Article IX

1. Each Contracting Government shall take appropriate measures to ensure the application of the provisions of this Convention and the punishment of infractions against the said provisions in operations carried out by persons or by vessels under its jurisdiction.

2. No bonus or other remuneration calculated with relation to the results of their work shall be paid to the gunners and crews of whale catchers in respect of any whale the taking of which is forbidden by this Convention.

3. Prosecution for infractions against or contraventions of this Convention shall be instituted by the Government having jurisdiction over the offense.

4. Each Contracting Government shall transmit to the Commission full details of each infraction of the provisions of this Convention by persons or vessels under the jurisdiction of that Government as reported by its inspectors. This information shall include a statement of measures taken for dealing with the infraction and of penalties imposed.

Article X

1. This Convention shall be ratified and the instruments of ratification shall be deposited with the Government of the United States of America.

2. Any Government which has not signed this Convention may adhere thereto after it enters into force by a notification in writing to the Government of the United States of America.

3. The Government of the United States of America shall inform all other signatory Governments and all adhering Governments of all ratifications deposited and adherences received.

4. This Convention shall, when instruments of ratification have been deposited by at least six signatory Governments, which shall include the Governments of the Netherlands, Norway, the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland, and the United States of America, enter into force with respect to those Governments and shall enter into force with respect to each Government which subsequently ratifies or adheres on the date of the deposit of its instrument of ratification or the receipt of its notification of adherence.

5. The provisions of the Schedule shall not apply prior to July 1, 1948. Amendments to the Schedule adopted pursuant to Article V shall not apply prior to July 1, 1949.

Article XI

Any Contracting Government may withdraw from this Convention on June thirtieth of any year by giving notice on or before January first of the same year to the depositary Government, which upon receipt of such a notice

shall at once communicate it to the other Contracting Governments. Any other Contracting Government may, in like manner, within one month of the receipt of a copy of such a notice from the depositary Government, give notice of withdrawal, so that the Convention shall cease to be in force on June thirtieth of the same year with respect to the Government giving such notice of withdrawal.

This Convention shall bear the date on which it is opened for signature and shall remain open for signature for a period of fourteen days thereafter.

In witness whereof the undersigned, being duly authorized, have signed this Convention.

Done in Washington this second day of December 1946, in the English language, the original of which shall be deposited in the archives of the Government of the United States of America. The Government of the United States of America shall transmit certified copies thereof to all the other signatory and adhering Governments.

For Argentina:
O. Ivanissevich
J. M. Moneta
G. Brown
Pedro H. Bruno Videla

For Australia:
F. F. Anderson

For Brazil:
Paulo Fróes da Cruz

For Canada:
H. H. Wrong
Harry A. Scott

For Chile:
Agustin R. Edwards

For Denmark:
P. F. Erichsen

For France:
Francis Lacoste

For the Netherlands:
D. J. Van Dijk

For New Zealand:
G. R. Powles

For Norway:
Birger Bergersen

For Peru:
C. Rotalde

For the Union of Soviet Socialist Republics:
A. Bogdanov
E. Nikishin

For the United Kingdom of Great Britain and Northern Ireland:
A. T. A. Dobson
John Thomson

For the United States of America:
Remington Kellogg
Ira N. Gabrielson
William E. S. Flory

For the Union of South Africa:
H. T. Andrews

Schedule

1. (a) There shall be maintained on each factory ship at least two inspectors of whaling for the purpose of maintaining twenty-four hour inspection. These inspectors shall be appointed and paid by the Government having jurisdiction over the factory ship.

(b) Adequate inspection shall be maintained at each land station. The inspectors serving at each land station shall be appointed and paid by the Government having jurisdiction over the land station.

2. It is forbidden to take or kill gray whales or right whales, except when the meat and products of such whales are to be used exclusively for local consumption by the aborigines.

3. It is forbidden to take or kill calves or suckling whale or female whales which are accompanied by calves or suckling whales.

4. It is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in any of the following areas:

(a) in the waters north of 66° North Latitude except that from 150° East Longitude eastward as far as 140° West Longitude the taking or killing of baleen whales by a factory ship or whale catcher shall be permitted between 66° North Latitude and 72° North Latitude;

(b) in the Atlantic Ocean and its dependent waters north of 40° South Latitude;

(c) in the Pacific Ocean and its dependent waters east of 150° West Longitude between 40° South Latitude and 35° North Latitude;

(d) in the Pacific Ocean and its dependent waters west of 150° West Longitude between 40° South Latitude and 20° North Latitude;

(e) in the Indian Ocean and its dependent waters north of 40° South Latitude.

5. It is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in the waters south of 40° South Latitude from 70° West Longitude westward as far as 160° West Longitude.

6. It is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating humpback whales in any waters south of 40° South Latitude.

7. (a) It is forbidden to use a factory ship or a whale catcher attached thereto for the purpose of taking or treating baleen whales in any waters south of 40° South Latitude, except during the period from December 15 to April 1 following, both days inclusive.

(b) Notwithstanding the above prohibition of treatment during a closed season, the treatment of whales which have been taken during the open season may be completed after the end of the open season.

8. (a) The number of baleen whales taken during the open season caught in any waters south of 40° South Latitude by whale catchers attached to factory ships under the jurisdiction of the Contracting Governments shall not exceed sixteen thousand blue-whale units.

(b) For the purposes of subparagraph (a) of this paragraph, blue-whale units shall be calculated on the basis that one blue whale equals:

(1) two fin whales or
(2) two and a half humpback whales or
(3) six sei whales.

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(c) Notification shall be given in accordance with the provisions of Article VII of the Convention, within two days after the end of each calendar week, of data on the number of blue-whale units taken in any waters south of 40° South Latitude by all whale catchers attached to factory ships under the jurisdiction of each Contracting Government.

(d) If it should appear that the maximum catch of whales permitted by subparagraph (a) of this paragraph may be reached before April 1 of any year, the Commission, or such other body as the Commission may designate, shall determine, on the basis of the data provided, the date on which the maximum catch of whales shall be deemed to have been reached and shall notify each Contracting Government of that date not less than two weeks in advance thereof. The taking of baleen whales by whale catchers attached to factory ships shall be illegal in any waters south of 40° South Latitude after the date so determined.

(e) Notification shall be given in accordance with the provisions of Article VII of the Convention of each factory ship intending to engage in whaling operations in any waters south of 40° South Latitude.

9. It is forbidden to take or kill any blue, fin, sei, humpback, or sperm whales below the following lengths:

(a) blue whales	70 feet (21.3 meters)
(b) fin whales	55 feet (16.8 meters)
(c) sei whales	40 feet (12.2 meters)
(d) humpback whales	35 feet (10.7 meters)
(e) sperm whales	35 feet (10.7 meters)

except that blue whales of not less than 65 feet (19.8 meters), fin whales of not less than 50 feet (15.2 meters), and sei whales of not less than 35 feet (10.7 meters) in length may be taken for delivery to land stations provided that the meat of such whales is to be used for local consumption as human or animal food.

Whales must be measured when at rest on deck or platform, as accurately as possible by means of a steel tape measure fitted at the zero end with a spiked handle which can be stuck into the deck planking abreast of one end of the whale. The tape measure shall be stretched in a straight line parallel with the whale's body and read abreast the other end of the whale. The ends of the whale, for measurement purposes, shall be the point of the upper jaw and the notch between the tail flukes. Measurements, after being accurately read on the tape measure, shall be logged to the nearest foot: that is to say, any whale between 75′6″ and 76′6″ shall be logged as 76′, and any whale between 76′6″ and 77′6″ shall be logged as 77′. The measurement of any whale which falls on an exact half foot shall be logged at the next half foot, *e.g.* 76′6″ precisely, shall be logged as 77′.

10. It is forbidden to use a land station or a whale catcher attached thereto for the purpose of taking or treating baleen whales in any area or in any

waters for more than six months in any period of twelve months, such period of six months to be continuous.

11. It is forbidden to use a factory ship, which has been used during a season in any waters south of 40° South Latitude for the purpose of treating baleen whales, in any other area for the same purpose within a period of one year from the termination of that season.

12. (a) All whales taken shall be delivered to the factory ship or land station and all parts of such whales shall be processed by boiling or otherwise, except the internal organs, whale bone and flippers of all whales, the meat of sperm whales and of parts of whales intended for human food or feeding animals.

(b) Complete treatment of the carcasses of "Dauhval" and of whales used as fenders will not be required in cases where the meat or bone of such whales is in bad condition.

13. The taking of whales for delivery to a factory ship shall be so regulated or restricted by the master or person in charge of the factory ship that no whale carcass (except of a whale used as a fender) shall remain in the sea for a longer period than thirty-three hours from the time of killing to the time when it is taken up on to the deck of the factory ship for treatment. All whale catchers engaged in taking whales must report by radio to the factory ship the time when each whale is caught.

14. Gunners and crews of factory ships, land stations, and whale catchers shall be engaged on such terms that their remuneration shall depend to a considerable extent upon such factors as the species, size, and yield of whales taken, and not merely upon the number of the whales taken. No bonus or other remuneration shall be paid to the gunners or crews of whale catchers in respect of the taking of milk-filled or lactating whales.

15. Copies of all official laws and regulations relating to whales and whaling and changes in such laws and regulations shall be transmitted to the Commission.

16. Notification shall be given in accordance with the provisions of Article VII of the Convention with regard to all factory ships and land stations of statistical information (a) concerning the number of whales of each species taken, the number thereof lost, and the number treated at each factory ship or land station, and (b) as to the aggregate amounts of oil of each grade and quantities of meal, fertilizer (guano), and other products derived from them, together with (c) particulars with respect to each whale treated in the factory ship or land station as to the date and approximate latitude and longitude of taking, the species and sex of the whale, its length and, if it contains a foetus, the length and sex, if ascertainable, of the foetus. The data referred to in (a) and (c) above shall be verified at the time of the tally and there shall also be notification to the Commission of any information which may be collected or obtained concerning the calving grounds and migration routes of whales.

In communicating this information there shall be specified:

(a) the name and gross tonnage of each factory ship;

(b) the number and aggregate gross tonnage of the whale catchers;

(c) a list of the land stations which were in operation during the period concerned.

17. Notwithstanding the definition of land station contained in Article II of the Convention, a factory ship operating under the jurisdiction of a Contracting Government, and the movements of which are confined solely to the territorial waters of that Government, shall be subject to the regulations governing the operation of land stations within the following areas:

(a) on the coast of Madagascar and its dependencies, and on the west coasts of French Africa;

(b) on the west coast of Australia in the area known as Shark Bay and northward to Northwest Cape and including Exmouth Gulf and King George's Sound, including the port of Albany; and on the east coast of Australia, in Twofold Bay and Jervis Bay.

18. The following expressions have the meanings respectively assigned to them, that is to say:

"baleen whale" means any whale other than a toothed whale;

"blue whale" means any whale known by the name of blue whale, Sibbald's rorqual, or sulphur bottom;

"fin whale" means any whale known by the name of common finback, common rorqual, finback, finner, fin whale, herring whale, razorback, or true fin whale;

"sei whale" means any whale known by the name of *Balaenoptera borealis,* sei whale, Rudolphi's rorqual, pollack whale, or coalfish whale, and shall be taken to include *Balaenoptera brydei,* Bryde's whale;

"gray whale" means any whale known by the name of gray whale, California gray, devil fish, hard head, mussel digger, gray back, rip sack;

"humpback whale" means any whale known by the name of bunch, humpback, humpback whale, humpbacked whale, hump whale, or hunchbacked whale;

"right whale" means any whale known by the name of Atlantic right whale, Arctic right whale, Biscayan right whale, bowhead, great polar whale, Greenland right whale, Greenland whale, Nordkaper, North Atlantic right whale, North Cape whale, Pacific right whale, pigmy right whale, Southern pigmy right whale, or Southern right whale;

"sperm whale" means any whale known by the name of sperm whale, spermacet whale, cachalot, or pot whale;

"Dauhval" means any unclaimed dead whale found floating.

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Message:

From: Ann

FISHING CONSERVATION
P.L. 92-219

FISHERMEN'S PROTECTIVE ACT—AMENDMENT

P.L. 92-219, see page 890

House Report (Merchant Marine and Fisheries Committee) No. 92-468, Aug. 6, 1971 [To accompany H.R. 3304]

Senate Report (Commerce Committee) No. 92-583, Dec. 14, 1971 [To accompany H.R. 3304]

Cong. Record Vol. 117 (1971)

DATES OF CONSIDERATION AND PASSAGE

House October 4, 1971

Senate December 15, 1971

The House Report is set out.

HOUSE REPORT NO. 92-468

THE Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 3304), to amend the act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American origin, having considered the same, report favorably thereon with amendments and recommend that the bill H.R. 3304 as amended do pass.

PURPOSE OF THE LEGISLATION

The purpose of the legislation is to authorize the President to prohibit the importation of fishery products from nations which conduct fishing operations in a manner that diminishes the effectiveness of international fishery conservation programs upon certification by the Secretary of Commerce.

LEGISLATIVE BACKGROUND

Congressman Pelly introduced H.R. 3304 on February 2, 1971, for himself and Congressmen Keith, Conte, Wyatt, Goodling, McCloskey, Don H. Clausen, Wylie, Hathaway, Scott, Sandman, King, Dent, Rogers, Pike, Pirnie, Talcott, Johnson of California, Lennon, Hosmer, Blackburn, Steele, Coughlin, Horton and Clark. Identical bills, H.R. 3305 and 3841, were also introduced by Congressman Pelly with Congresswoman Dwyer and Congressman Hicks of Washington, Thompson of Georgia, Halpern, Williams, Rees, Lent, Hogan, Miller of California, Burke of Massachusetts, Mrs. Hicks of Massachusetts, Biaggi, Meeds, McCormack, Sisk and St Germain, as co-sponsors. Congressmen Cleveland and Wyman introduced identical bills, H.R. 4928 and H.R. 7242, respectively.

Hearings were conducted by the Fisheries and Wildlife Conservation Subcommittee on May 24, and July 8, 1971. Testimony was re-

ceived from Congressman Silvio Conte, Chalmers P. Wylie and James C. Cleveland; representatives of the Department of State, Interior, Commerce and Treasury and representatives of the following interested conservation groups: Trout Unlimited, Committee on the Atlantic Salmon Emergency, National Wildlife Federation, International Atlantic Salmon Foundation, and the Fly Fishermen's Association.

Initially, representatives of the various departments acknowledged the need for action to protect the Atlantic Salmon from high seas fishing, but did not favor the oblique approach suggested by H.R. 3304. In this regard their statements paralleled the agency reports. Subsequently, Departments of State and Commerce witnesses expressed views favoring the import ban approach subject to amendment of the bill as discussed in detail below.

All other witnesses before the Committee favored the concept of prohibiting the importation of fishery products in the interest of conservation as set forth in H.R. 3304. With respect to Atlantic Salmon, the hope was generally expressed that an effective ban on high seas fishing would be accepted by all of the principal fishing nations at the June annual meeting of the International Northwest Atlantic Fisheries Commission.

As introduced, H.R. 3304 directed the Secretary of Commerce, whenever he determines that nationals of a foreign country are conducting fishing operations which diminish the effectiveness of domestic conservation programs for Atlantic Salmon of North American origin, to certify such fact to the Secretary of the Treasury. Upon receipt of such certification, the Secretary of the Treasury was directed to prohibit the importation into the United States of any fish products of the offending country.

H.R. 3304, as reported by the Committee, differs substantially from the bill as introduced. The scope of the legislation has been expanded to include all international fishery conservation programs as opposed to domestic United States programs dealing only with North American Atlantic Salmon. Authority to prohibit importation of fish products has been vested in the President upon certification by the Secretary of Commerce. The President has full discretion in exercising this authority, however, he must advise the Congress of his actions or explain his inaction if such be the case, within 60 days following a certification by the Secretary of Commerce. These changes and other technical revisions to the bill are designed to meet all objections raised by departmental witnesses and agency reports.

H.R. 3304, with amendments, was ordered reported by the Committee unanimously by voice vote, a quorum being present.

Need For This Legislation—The Atlantic Salmon Problem

Anadromous fish begin their life in fresh water, where they live for varying periods, then migrate to salt water—the oceans—where they usually spend most of their adult lives and finally return to fresh water usually to the stream of their birth where they spawn and die having completed their life cycle. During their ocean life anadromous fish migrate through territorial and international waters, and as a result, their conservation depends upon the cooperation of all nations engaged in high seas fisheries.

FISHING CONSERVATION

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The taking of anadromous fish on the high seas is inherently wasteful and contrary to sound conservation of the resource. Adequate numbers of fish must be permitted to return to their native streams to insure the continued survival of these inland bodies of water as spawning grounds.

Salmon are the most notable example of anadromous fish. They are a valuable commercial, as well as sport fish. Off the west coast of the United States the Steelhead is the principal sports fish of the Salmon family. In the Atlantic, the similar Atlantic Salmon is a highly prized sports fish. Historically, salmon fishing in the streams of Scotland has been regarded as the ultimate in the sport of fishing.

On both sides of the Atlantic the Salmon is highly prized. In the Maritime Provinces of Canada alone there are estimated to be over 16,500 nets designed to take the Salmon as they enter fresh water while permitting sufficient numbers to migrate to the spawning grounds.

In the New England states where the Salmon once abounded, pollution of fresh water rivers and streams has taken a heavy toll. Millions of dollars are being spent to abate this pollution, restore the water and restock the rivers with Salmon. In an arc stretching from New England to Ireland, many thousands of people rely upon the Atlantic Salmon for their livelihood—as fishermen, guides, cooks and the innumerable other occupations linked to sports fishing.

The use of nets on the high seas as opposed to close inshore results in the taking of immature salmon and nullifies all efforts to insure an adequate run in each salmon stream. Salmon from Europe, Canada, and the United States are intermingled and their origins can only be determined by trained scientists after being taken on board ship.

Until 1960 the ocean migration of the Atlantic Salmon was essentially unknown, the taking of Atlantic Salmon was limited to those inshore waters where the fish congregate for their upstream migration. Sophisticated electronic equipment now enables man to probe the depths of the sea and locate schools of fish with great accuracy. It is no longer a question of chance.

Utilizing sonic echo recording gear Danish fishermen discovered that Atlantic Salmon schools concentrate during winter months in the Davis Straits between Labrador and Greenland. Commercial high seas fishing for Atlantic Salmon resulted. The Danish catch rose to over 900 tons in 1969. Norway and Sweden took 250 tons and 30 tons respectively. By comparison, the total high seas catch in 1965 was 36 tons.

The International Convention for the Northwest Atlantic Fisheries, better known as ICNAF, which entered into force in 1950, is composed of 15 nations bordering the North Atlantic Ocean or actively engaged in fishing in those waters. It has as its purpose the protection and conservation of the fishery resources of the Northwest Atlantic in order to maintain the stocks of fish at a level permitting the maximum sustained catch. The growing threat to Atlantic Salmon prompted the ICNAF Commission to adopt a ban on high seas fishing for this species in 1969. The ban was accepted by most member countries permitting this conservation measure to enter into force. Denmark, the Federal Republic of Germany and Norway objected to such a ban, however, and under the terms of the convention are free to ignore the ban.

The failure of Denmark to recognize the ICNAF ban on Salmon fishing effectively nullified this measure. As a result efforts were under-

taken to freeze the catch at approximately the 1969 level. Denmark agreed to such a freeze and a quota of 1,200 tons of Salmon was adopted by the ICNAF Commission for the 1971 season. The quota was extended for the 1972 season after the three abstaining member countries again refused to agree to a total ban or even a reduction in the quota to phase out their fishing and re-establish their fishermen in other areas.

It must be emphasized that the quota merely prevents further acceleration of high seas fishing for Atlantic Salmon. This interim measure permits continued fishing at an already dangerously high level from the standpoint of long range conservation. It will not prevent the eventual destruction of this valuable sports fish.

The position of Denmark is most difficult to understand. Danish officials have repeatedly denied that the species is in danger of extinction or that there is any evidence to indicate that their fishing industry is depleting the salmon stock. Unfortunately, the only evidence which will prove such depletion beyond a shadow of doubt will be the virtual absence of fish returning to their native streams. By then it will be too late. World opinion to the contrary, Denmark appears determined to continue high seas fishing for Atlantic Salmon.

The Committee hearing on May 24, 1971, preceded by one day the annual meeting of ICNAF in Halifax, Nova Scotia. The hope expressed by witnesses that action at the Halifax meeting would resolve this issue was ill founded. Departmental witnesses who appeared at the July hearings testified in light of this failure. Their statements reflected new awareness, missing from departmental reports, that extraordinary measures are required to reverse the destructive exploitation of salmon.

Witnesses for the Departments of State and Commerce (National Marine Fisheries Service) recommended that the legislation be amended so that international conservation programs or measures rather than domestic programs be the conservation yardstick for measuring foreign fishing activities and that an element of flexibility be introduced. It was further developed that the legislation should not be geared exclusively to conservation of the North Atlantic Salmon, but should be applied generally to international fishery conservation programs.

The Committee concurs in these recommendations and has substantially revised the bill along these lines.

A question arose during the July hearing over the retroactive effect of this legislation. The Committee wishes to make it clear that upon enactment the responsibility of the Secretary of Commerce and the authority of the President relate to then existing international fishery conservation measures as well as such measures as may be adopted thereafter.

While the North Atlantic Salmon is of critical concern to the Committee, the authority set forth in this legislation may prove valuable in dealing with other heavily fished species should conservation measures be adopted to preserve their abundance. The general level of fishing for all commercially desirable species has risen dramatically during the past decade. The highly productive fishing grounds off New England—the Grand Banks and Georges Bank have been subjected to a level of fishing activity which cannot continue indefinitely. The potential denial of American markets may cause some of the countries which

have contributed to this conservation nightmare to become more amenable; a pious hope perhaps but at least one worth pursuing.

SECTION-BY-SECTION ANALYSES

H.R. 3304, as reported, amends the Fishermen's Protective Act of 1967 by adding a new section 8 at the end thereof to provide as follows:

Section 8 (a) directs the Secretary of Commerce to certify to the President the fact that nationals of a foreign country, directly or indirectly, are conducting fishing operations in a manner or under circumstances which diminish the effectiveness of an international fishery conservation program whenever he determines the existence of such operations.

The President in turn may then direct the Secretary of the Treasury to prohibit the bringing or importation in the United States of fish products of the offending country, i.e. the country whose nationals are conducting such fishing operations. The President may fix the duration of the prohibition or may leave the ban open ended. The prohibition may extend to all fish products as defined in Section 8(g) or may be limited to specific products in the judgment of the President consistent with the General Agreement on Tariffs and Trade (GATT).

Article XX of GATT provides in part as follows:

> Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:
>
> * * * * * * *
>
> (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;

The Department of State in its report on this legislation stated in part:

> Consideration might be given, therefore, to the adoption of appropriate measures applicable to nations conducting their fishing operations contrary to widely observed international conservation regulations. Properly drawn, such measures would not violate the international trade obligations or commercial policy of the United States. While the use of trade sanctions is generally inconsistent with our obligations and policies, it is recognized as appropriate to apply limited restrictions to trade to achieve comparability between the treatment afforded domestic and foreign interests in carrying out such conservation regulations.

This is of course exactly what the Committee has done in revising the legislation.

The extent to which fish products may be subjected to a general embargo within the framework of Article XX of GATT as opposed

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to an embargo covering only the species protected by an international conservation program has not been resolved by the Department of State. For this reason Section 8(a) expressly recognizes the potential limitations imposed upon the President by GATT.

The Committee is of the strong opinion that Article XX of GATT does not limit the President to declaring an embargo upon Danish salmon, for example, but that the President may embargo all Danish fishery products in order to emphasize our opposition to Denmark's high seas salmon fishery. The monetary value of a single specie of fish may be insignificant thus nullifing the purpose of this legislation if such a narrow interpretation of the GATT conservation provision is adopted.

In the case of Atlantic Salmon, Danish exports to the United States totalled 54,365 pounds in 1970 worth $63,844.00. Imports of all Danish fish products totalled 31,656,000 lbs. valued at $10,543,298. The impact of losing a 10 million dollar market as opposed to a 63 thousand dollar market is obvious.

The Committee sincerely hopes that it will not be necessary for the President to invoke the powers granted by this legislation. Yet, if any nation refuses to cooperate with sound international conservation measures, it should expect that the President will act promptly and firmly.

Section 8(b) requires the President to notify the Congress of any action taken pursuant to a certification by the Secretary of Commerce. This information shall be furished within 60 days of such certification and if the President has not utilized the authority granted by Section 8(a) he shall inform the Congress of the reasons therefore. In a similar vein if any import prohibition does not extend to all fish products of the offending country, he must advise Congress of the reasons for such a partial embargo.

In view of the State Department's inability to furnish the Committee a definitive interpretation of Article XX of GATT, the Committee considers this reporting provision essential to its oversight responsibility. It will also insure that the Congress is made aware of the failure of any foreign country to abide by an international fishery conservation program.

Section 8(c) declares it to be unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into the United States any fish products prohibited by the Secretary of the Treasury.

Section 8(d) establishes fines for violation of this section; provides for forfeiture of illegal imports and provides for general application of the customs laws.

Section 8(e) vests enforcement responsibilities in the Secretary of the Treasury and provides for issuance of warrants, arrest and seizure.

Section 8(f) authorizes the Secretary of the Treasury to prescribe regulations to implement this section.

Section 8(g) defines the terms "person," "United States," "international fishery conservation program" and "fish products."

The term "United States" has been amended to exclude those areas where the Department of the Treasury does not have customs enforcement jurisdiction. This is in accord with the Treasury report.

The term "international fishery conservation program" adopted by the Committee in lieu of the restrictive language "domestic conservation programs of Atlantic salmon of North American origin" is de-

fined to include any ban, restriction, regulation or other measure in force pursuant to a multi-lateral agreement to which the United States is a party, the purpose of which is to conserve or protect the living resources of the sea.

The Committee wished to be absolutely certain that the ICNAF ban on the taking of Atlantic Salmon now in force would qualify under the foregoing definition.

The Department of State advised the Committee as follows:

> The 1969 annual meeting of the International Commission for the Northwest Atlantic Fisheries adopted a proposal to institute a total ban on fishing for salmon within the entire convention area outside national fisheries limits. That proposal was then referred to governments for acceptance or rejection. On December 19, 1969 a Protocol to the Convention entered into force which changed the procedure for entry into force of such fisheries regulatory proposals. The Depositary Government suggested that the new procedure be applied to outstanding regulatory proposals, such that for a total ban on salmon fishing, in the absence of objectives. Under this new procedure the total ban became effective on April 3, 1970 for 11 members of the Commission. They are Canada, France, Iceland, Italy, Poland, Portugal, Romania, Spain, USSR, UK, and USA. The proposal subsequently became effective for Japan when it adhered to the Convention on July 1, 1970. The ban did not take effect for Denmark, the Federal Republic of Germany, and Norway which presented objections to it under the Protocol's provisions. No formal objections were lodged to the Depositary Government's interpretation although some questions were raised as to its legality. However, it should be noted that both the 1970 and 1971 compromise proposals on salmon adopted by the Commission specifically recognize the existence of the ban. Both of these compromise proposals were adopted with an affirmative vote by the three nations which had objected to the ban. Accordingly, there can be no doubt that the ban is in effect for 12 of the 15 nations which are members of the Commission.
>
> We consider that this regulation constitutes an internationally agreed conservation measure which is widely observed and which could serve as the basis for restrictions on imports from nations failing to abide by this conservation measure under legislation which might be adopted along the lines suggested by the Department in its report of July 7, 1971 on H.R. 3304. I should note, however, that the Department does not consider that the substitution of a phrase concerning proposals adopted by the Commission for the present wording of the bill on domestic conservation programs would suffice to modify the bill along the lines suggested by the suggested by the Department. Rather, it is our view that a clean bill would have to be drafted along the lines suggested by the Department to overcome our objecions to H.R. 3304. The Department would be pleased, I am sure, to assist the Committee in preparing such a clean bill, together with the other interested agencies of Government.

It is our view that such a clean bill, if properly drafted, would apply retroactively to such conservation measures (which would have to be defined in the bill) already in effect at the time of enactment of such legislation. That is to say, the provisions permitting restrictions on imports of fish or fish products to the United States would not apply only to conservation measures adopted subsequent to its enactment. The purpose of such legislation would be substantially defeated if it were only to apply to future regulations. It might be desirable, however, to include in the bill a grace period before its provisions could be implemented with regard to internationally agreed conservation regulations already in effect in order to allow nations not observing them to review their position. It is our understanding that such import restrictions might be applied to any nation not observing widely observed international conservation regulations, whether or not they were members of the international commission or parties to the international agreement adopting such regulations, and whether or not they as a member of the international commission or party to the international agreement were within their rights in the commission or under the agreement in declining to accept the conservation measure in question.

Similarly the Department of Commerce, National Oceanic and Atmospheric Administration, stated:

In response to your letter of July 15, 1971, regarding the testimony of Mr. William Terry on H.R. 3304, on July 8, 1971, I am happy to reaffirm Mr. Terry's testimony to the effect that there is now in force an ICNAF ban on high seas fishing for Atlantic salmon and that, assuming the retroactive character of the legislation, the existence of this ban would, under the terms of H.R. 3304, authorize the President to impose sanctions against countries which do not abide by that ban whether or not they are members of ICNAF and whether or not, if members of ICNAF, they have not accepted the ban.

It does occur to me that some question may arise as to the extent to which such an interpretation of the statute would be consistent with the international law on treaties, but on this point we would defer to the Department of State.

With regard to the retroactive character of H.R. 3304, we would have no objection to its being interpreted as applying to measures in force on the date of its enactment.

In commenting upon the broadened concept of an international conservation measure, Departmental witnesses frequently prefased that concept with the term "widely held," apparently suggesting that a substantial number of countries must adhere to a conservation program before the United States may give it such credence as to warrant the imposition of trade sanctions for its breach. The Committee does not accept such a notion but believes rather that all multi-lateral conservation agreements, be there 3 or 15 signatory nations, stand on an equal footing. The key to the application of this legislation is not the number of signatories but whether the conservation measure is in force pursuant to the agreement's terms.

The term "fish products" includes the whole fish and all products thereof as for example fish sticks, fillets, oil and flour. The term also embraces marine mammals. The definition makes it clear that country of final export to the United States is not relevant. It is fish products taken by fishing vessels of an offending country which may be denied entry into the United States. The fact that such fish are shipped to a third country for processing or packaging before export to the United States would not alter their status. Should the Committee determine that offending countries are attempting to circumvent the thrust of this legislation by employing non-national flag fishing vessels or by any other subterfuge, appropriate steps will be taken.

Cost of the Legislation

Inasmuch as this legislation is permissive it is not possible to estimate what additional Customs enforcement personnel or funds might be required. It is not anticipated that the enactment of this legislation will require additional appropriations for the Department of Commerce.

Changes in Existing Law Made by the Bill, as Reported

The bill, as reported, does not change existing law.

Department of State,
Washington, D.C., July 7, 1971.

Hon. Edward A. Garmatz,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

Dear Mr. Chairman: Your letter of February 19, 1971, requested the views and recommendations of the Department of State on H.R. 3304, a bill to amend the Act of August 27, 1954, to conserve and protect Atlantic salmon of North American origin. The bill would prohibit the importation into the United States of fish products from any foreign country whose nationals conduct fishing operations in a manner which diminishes the effectiveness of domestic conservation programs for Atlantic salmon of North American origin.

The Department agrees with the objectives of H.R. 3304 to promote the conservation of Atlantic salmon. It is nevertheless opposed to the enactment of the bill as drafted because unilateral action along the lines proposed could interfere with efforts in which the United States Government is engaged to achieve long-term international agreement on conservation measures applicable to Atlantic salmon through the International Commission on Northwest Atlantic Fisheries. The interim measures adopted by the Commission, while not fully satisfactory to the United States as a long-term solution to this problem, have halted the previous rapid increase in exploitation of Atlantic salmon on the high seas and have provided support to the domestic conservation program. The Department favors pursuing the route of negotiations as long as prospects appear favorable for achieving our goals.

The unilateral application of an embargo on all fish products from countries because of failure of their nationals to follow United States conservation rules for Atlantic salmon would subject the United

States to demands for compensation or threats of retaliatory action against American exports by the affected countries. It would be maintained that the embargo was contrary to our commercial agreements and in particular to the General Agreement on Tariffs and Trade.

The proposed legislation would apply to a single conservation problem and to a very limited number of countries. There are a number of other important fisheries conservation problems facing the United States which also must be dealt with. Implementation of internationally agreed fishing rules may encounter difficulties if foreign fishermen operating in conflict with these rules have unqualified access to markets of those abiding by the rules. Consideration might be given, therefore, to the adoption of appropriate measures applicable to nations conducting their fishing operations contrary to widely observed international conservation regulations. Properly drawn, such measures would not violate the international trade obligations or commercial policy of the United States. While the use of trade sanctions is generally inconsistent with our obligations and policies, it is recognized as appropriate to apply limited restrictions to trade to achieve comparability between the treatment afforded domestic and foreign interests in carrying out such conservation regulations.

Measures adopted for this purpose, of course, should assure that the American market remains open to fish suppliers of all nations abiding by the internationally agreed conservation rules binding on American fishermen. The measures, moreover, to best serve the overall interests of our country should be applied with discretion. The President should have the authority to determine in individual cases the extent of the action which would, consistently with our international obligations, be applied to the importation of fishery products from countries not applying the widely observed conservation rules. In addition, any such measures should be designed to minimize the administrative and enforcement problems that could arise; the Department of State defers to the views of the other interested agencies in this respect.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

DAVID M. ABSHIRE,
Assistant Secretary for Congressional Relations.

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., August 3, 1971.

Hon. EDWARD A. GARMATZ.
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 3304, a bill to amend the Act of August 27, 1954 (commonly known as the Fisherman's Protective Act) to conserve and protect Atlantic salmon of North American origin.

H.R. 3304 would amend the unrelated Act of August 27, 1954, by adding authority to place an embargo on imports of fish products from any foreign country found to be "conducting fishing operations in a

manner or in such circumstances which diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin." The Secretary of Commerce would have responsibility for certifying to the Secretary of the Treasury when such fishing operations were being conducted, and the latter would have responsibility for instituting and enforcing the embargo.

We believe the bill should be amended by replacing the words "domestic conservation programs of Atlantic salmon of North American origin" on page 2, lines 4 and 5, with "conservation proposals for Atlantic salmon of the International Commission for the Northwest Atlantic Fisheries." Furthermore, we are not completely satisfied that a total embargo is warranted at this time. Possibly some lesser action should be prescribed initially, allowing the United States to assess the effectiveness of this kind of measure. In addition we recognize that a mandatory embargo has broad foreign policy implications on which issue we defer to the Department of State.

We agree with the intent of the proposed legislation. We believe, however, that any action taken in regard to this problem should be related to international rather than domestic conservation programs. International cooperation is essential if salmon are to be conserved during migrations on the high seas which are free for the use of all nations. The United States is actively supporting work within the International Commission for the Northwest Atlantic Fisheries (ICNAF) to develop a high seas salmon conservation program in the area where salmon of North American origin migrate. This Commission has authority to coordinate and develop high seas fisheries conservation programs by its 15 member nations, which include the principal countries fishing in the Northwest Atlantic.

At its Annual Meeting in 1970, ICNAF proposed a freeze on high seas salmon catches or fishing effort in the North Atlantic at the 1969 level. (In our view salmon fishing should only be permitted in the coastal and inshore areas where salmon return in the spawning season so that sufficient escapement for spawning purposes to home streams can be assured.) While we continue to favor a complete ban on high seas fishing for salmon, we have supported the freeze on high seas salmon fishing activities as proposed by ICNAF as an important first step toward more effective controls. The proposal in ICNAF was also supported by the principal countries taking Atlantic salmon on the high seas such as Denmark and Norway, and will become binding upon them early this year unless their Governments file formal objections. We have no indications at the present time that they plan such objections.

There is, of course, no certainty that an embargo on the products of the fisheries of a country that refuses to cooperate with the conservation measures described above would be effective to accomplish the desired results. The loss of U.S. markets for fishery products, however, would have definite impact on the fishing industries of countries that have been involved in the high seas fishery for Atlantic salmon. (U.S. imports of fish and fishery products in 1969 from Norway totaled $30.5 million, and from Denmark $9.0 million.)

It is useful to note that a similar approach was taken in the Tuna Conventions Act of 1950, as amended (16 U.S.C. 951–961). That Act authorizes, e.g., an embargo on imports of certain species of tuna from countries whose vessels act "in such manner or in such circumstances

as would tend to diminish the effectiveness of the conservation recommendations" of the Inter-American Tropical Tuna Commission.

We note that in describing the commodities subject to the prohibition against importation, the bill uses the term "fish products" in ten places. On page 5, line 3, the term is changed to read "fish food products." The reason for this distinction is not apparent.

Moreover, there could be a problem with the interpretation of the term "fish products." Some fish is imported into the United States with a minimum of processing and in order to make it clear that whole fish is included in the term describing the commodities subject to import prohibition we recommend that in the ten places where the term "fish products" appears and the one place where the term "fish food products" appears, that there be substituted the term "fish or fishery products." Such amendments would avoid any real problems of interpretation.

Enactment of the proposed legislation would not of itself create any impact on the environment, such as to require an environmental impact statement under the provisions of section 102(2)(c) of the National Environmental Policy Act of 1969.

We have been advised by the Office of Management and Budget that there would be no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

WILLIAM N. LETSON,
General Counsel.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., May 21, 1971.

Hon. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for our comments on H.R. 3304, a bill to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American origin. Our comments apply as well to H.R. 4928 and H.R. 7272, identical bills also pending before your committee.

H.R. 3304 would add a new section to the Fishermen's Protective Act of 1967 (68 Stat. 883, as amended; 22 U.S.C. 1971–1977). Under that section, the Secretary of the Treasury would be directed to prohibit the importation of fish products from a foreign country certified by the Secretary of Commerce to be "conducting fishing operations in a manner in such circumstances which diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin". Graduated fines for first and subsequent violations of such prohibition would be imposed against persons subject to jurisdiction of the United States. Responsibility for enforcement is assigned to the Secretary of the Treasury, with actions cognizable in the District Courts of the United States, the highest court of its territories and possessions, and the High Court for the Trust Territory of the Pacific Islands.

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This Department has long recognized that wasteful fishing on the Atlantic high seas constitutes a grave threat to our domestic salmon resource, and that domestic conservation, in which we are vitally interested, would be to no avail in the absence of effective international regulation. In quest of such regulation, the United States has participated since 1950 as a member of the International Commission for the Northwest Atlantic Fisheries. As the Committee is no doubt aware, the Commission is charged with investigation, protection and conservation of the fisheries of the Northwest Atlantic, and has functioned with considerable success to coordinate the fisheries conservation programs of its 15 member nations. While it remains our ultimate objective, and that of most member nations, to ban all high seas fishing for salmon, we have sought to impose quantitative restrictions on the high seas exploitation of Atlantic salmon. In 1969, a total of 1,204 metric tons were taken in the high seas off west Greenland, primarily by Denmark and its dependencies (924 tons), Norway (250 tons), and Sweden (30 tons). This catch was twice the size of that in 1968, and had increased from 36 tons in 1965.

At its 1970 annual meeting, ICNAF adopted additional regulatory proposals for the control of high seas fishing by Denmark and Norway. Though a total ban was adopted in 1969, it has not been accepted by a number of member nations and interim measures were believed necessary. Such interim limitations have therefore been accepted by all member nations for 1971. In addition, ICNAF and the International Council for the Exploration of the Sea (ICES) have formed a Joint Working Party to assess the effects of high seas fishing on the home water catches of Atlantic salmon. This group, including a biologist from our Bureau of Sport Fisheries and Wildlife, has been handicapped by a lack of scientific data on which to base its evaluation. The Working Party has proposed a large international tagging and research effort for 1972, and will urge participating countries to increase home water research activities.

Within the context of this increasingly successful international effort, we cannot recommend the adoption of a unilateral embargo, such as would be authorized by H.R. 3304. The Department of State is, of course, best qualified to assess the impact of an embargo upon relations with ICNAF nations and other members of the world community. We believe, however, that such action could be inconsistent with United States policy to seek world-wide protection of fish and wildlife resources through international agreement, and that an embargo would not be necessarily effective to reduce high seas exploitation of Atlantic salmon. It should be noted that the government of Denmark is aware of support in this country for economic sanctions, and fearful that its friendly relations with the United States are in jeopardy.

At a meeting with Danish officials last month, a distinguished delegation from the private Committee on the Atlantic Salmon Emergency (CASE advised of its opposition to a boycott or embargo. The CASE delegation also attempted to distinguish the Baltic high seas fishery, of concern to European nations as a commercial resource, from that of the Northwest Atlantic, where the effect upon sportfishing is of interest to the United States and Canada.

The Committee may be assured that this Department will accelerate its efforts to assure protection of the Atlantic salmon. These include

active participation in ICNAF, as noted, and joint administration with the States of enhancement programs under authority of the Anadromous Fish Conservation Act. We appreciate the long standing concern of your Committee, and welcome the interest of conservationists from all parts of the United States. Both, we are confident, will be helpful in attaining the international regulation necessary to effective management of this important resource.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

HARRISON LOESCH,
Assistant Secretary of the Interior.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., July 7, 1971.

Hon. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives.

DEAR MR. CHAIRMAN: This is in reply to your request for our comments on H.R. 3304, a bill "To amend the Act of August 27, 1954 (commonly known as the Fishermen's Protection Act) to conserve and protect Atlantic salmon of North American origin."

This Department defers to other agencies more directly concerned for specific recommendations on the proposed bill.

The bill provides that, when the Secretary of Commerce determines that nationals of a foreign country are conducting fishing operations in a manner which diminishes the effectiveness of domestic conservation programs of Atlantic salmon of North American origin, the Secretary of the Treasury shall prohibit the importation into the United States of fish products of the offending country. The prohibition would also apply to fish product processed by persons subject to the jurisdiction of such country and transshipped through third countries to the United States. The bill establishes penalties for the violation of the import prohibitions.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

J. PHIL CAMPBELL,
Acting Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
July 13, 1971.

Hon. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of February 19, 1971, for a report on H.R. 3304, a bill to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American ori-

gin, and your request of March 31, 1971, for a report on H.R. 6413, a bill "To amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act), to strengthen the provisions therein relating to the protection of United States vessels on the high seas."

Our views on these bills are substantially those expressed in our report to you of this date on H.R. 978.

Sincerely,

(s) ELLIOT L. RICHARDSON,
Secretary.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
July 13, 1971.

Hon. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This letter is in response to your request of February 16, 1971 for a report on H.R. 978, a bill to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act), to strengthen the provisions therein relating to the protection of United States vessels on the high seas.

The bill provides that if the Secretary of State determines that a foreign country will not pay claims or is not negotiating in good faith after action has been taken by the Secretary of State under Section 5 of the Fishermen's Protective Act, he shall certify such fact to the Secretary of the Treasury. Section 5 of the Fishermen's Protective Act provides that the Secretary of State shall take such action as he may deem appropriate to make and collect on claims against a foreign country for amounts expended by the United States because of the seizure of a United States vessel by such country. The Secretary of the Treasury would then be required to prohibit the importation of any fish or fishery products caught or processed by any person subject to the jurisdiction of the offending country including fish or fish products transshipped through third countries to the United States. Under the bill it would also be unlawful for any person subject to the jurisdiction of the United States to knowingly import or cause to be imported into the United States such fish or fish products.

Enforcement of the provisions of this bill would be the responsibility of the Secretary of the Treasury. Any person authorized to carry out enforcement activities involving provisions of this bill would be empowered to execute any warrant or process issued by any officer or court of competent jurisdiction.

All fish or fishery products brought or imported into the United States in violation of the provisions of this bill would be subject to forfeiture. Seized fish or fishery products could be disposed of pursuant to the order of a court, or, if perishable, in a manner prescribed by regulations of the Secretary of the Treasury.

H.R. 978 does not directly affect the program responsibilities of the Department of Health, Education, and Welfare. Our only interest in the bill relates to the provision of Section 8(d)(5) which authorizes the Secretary of the Treasury to prescribe by regulation the manner of disposing of perishable fish and fishery products which have been seized under the Act. We would assume that the regulations promulgated by the Secretary of the Treasury will be in accordance with the requirements of the Federal Food, Drug, and Cosmetic Act and the

regulations promulgated thereunder by the Food and Drug Administration.

With this exception, the Department defers to the views of other Federal agencies as to the need for legislation to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act).

We are advised by the Office of Management and Budget that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

(s) ELLIOT L. RICHARDSON,
Secretary.

THE GENERAL COUNSEL OF THE TREASURY,
Washington, D.C., July 7, 1971.

Hon. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your request for the views of this Department on H.R. 3304, to amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act) to conserve and protect Atlantic salmon of North American origin.

The proposed legislation would amend the Fishermen's Protective Act of 1967, as amended (22 U.S.C. 1971 et seq.), by adding a new section at the end thereof providing that when the Secretary of Commerce determines that nationals of a foreign country are conducting fishing operations in a manner or in such circumstances which diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin, the Secretary of Commerce shall certify such fact to the Secretary of the Treasury, who shall then prohibit the bringing or importation into the United States of (1) any fish products of the offending country, and (2) fish products processed by any person subject to the jurisdiction of said country and transshipped through third countries to the United States. It would also make it unlawful for any person subject to the jurisdiction of the United States knowingly to bring or import into, or cause to be imported into, the United States any fish products prohibited by the Secretary of the Treasury.

It would provide punishment by fines, forfeiture of imported fish products, and condemnation and disposition under the Customs laws for forfeited property. The bill charges the Secretary of the Treasury with enforcement responsibility, empowers United States courts and United States Commissioners to issue warrants or other enforcement process, authorizes searches of vessels and arrests of persons subject to jurisdiction of the United States when committing a violation in the view or presence of any enforcement officer or when the latter has reason to believe the vessel or person is in violation, and provides for seizures of fish products.

The Department defers to the views of the Department of Commerce on the need for and advisability of the proposed legislation. However, extremely difficult enforcement problems would be likely to arise attending the discovery and identification of importations subject to the prohibition of the bill, particularly "fish products processed by any person subject to the jurisdiction of said country and transshipped through third countries to the United States."

The proposed legislation, at a minimum, should clearly define the class, status, and condition of persons who are to be deemed "subject to the jurisdiction of the offending country." By example, to show hypothetically the diverse prospects, it is pertinent that fishing and the processing of caught fish on the high seas or elsewhere may proceed under the flag of the country "A" employing a vessel master of country "B" with crew owing national allegiance to countries "C" and "D", using a vessel chartered to a person, company or corporation of country "E", involving transfers to a processing mother ship under the flag of country "F", and in country "G" eventual transshipment of the product to the United States on a cargo vessel of country "H".

The Department believes that enactment of H.R. 3304 would lead to additional and extremely burdensome administrative and enforcement problems.

The Customs territory of the United States within the Bureau of Customs' enforcement jurisdiction comprises the 50 States and the Commonwealth of Puerto Rico. The Virgin Islands (U.S.) is outside the Customs territory of the United States, although it is under the Department's jurisdiction for Customs purposes. The Bureau of Customs exercises no Customs enforcement responsibilities in the remaining areas included in the definition of the term "United States" in the bill. Therefore, appropriate provisions for enforcement responsibility in territories and possessions other than Puerto Rico and the Virgin Islands (U.S.), in the Canal Zone, and in the Trust Territory of the Pacific Islands should be added to the bill, in the event it receives favorable consideration.

The Treasury Department would be happy to cooperate with the Committee in drafting language that would minimize the administrative and enforcement problems outlined above.

The Department has been advised by the Office of Management and Budget that there is no objection from the standpoint of the Administration's program to the submission of this report to your Committee.

Sincerely yours,

ROY T. ENGLERT,
Acting General Counsel.

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
Washington, D.C., July 8, 1971.

Hon. EDWARD A. GARMATZ,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 3304, a bill "To amend the Act of August 27, 1954 (commonly known as the Fishermen's Protective Act), to conserve and protect Atlantic salmon of North American origin."

Under the Act (22 U.S.C. 1971 *et seq.*), as amended (Pub. L. 90-482, 82 Stat. 729), when an American-flag vessel is seized by a foreign country on the ground of rights or claims to territorial waters or on the high seas which are not recognized by the United States and a fine, license or registration fee, or other direct charge must be paid to secure the vessel's release, the Secretary of the Treasury reimburses the owners for such costs. For a four-year period beginning in 1969

the Act also authorizes the establishment of a guaranty fund for commercial fishing vessels. The fund is administered by the Secretary of Commerce and financed through fees paid by participating vessel owners and appropriated funds. This program reimburses such owners for certain losses suffered as a result of the seizure and detention of such vessels while operating in disputed international waters, including (a) damage, destruction, loss, or confiscation of the vessel and its gear, (b) market value of fish spoiled or confiscated, and (c) not more than 50% of lost gross income.

The Act directs the Secretary of State to take appropriate action to collect claims against a foreign country for amounts expended by the United States under the Act because of the seizure of a vessel by a foreign country. If such claim is not paid within a specified period, the Secretary withholds, pending such payment, an amount equal to such payment from any funds programmed during a fiscal year for assistance to the government of such country. Amounts so withheld do not constitute satisfaction of such claims.

The bill would add to the Act a new § 8. It would provide that if the Secretary of Commerce certifies that fishing operations of foreign nationals diminish the effectiveness of domestic conservation programs of Atlantic salmon of North American origin, the Secretary of the Treasury shall prohibit the importation into the United States of fish or fishery products from the foreign country whose nationals engage in these practices. The bill makes detailed provisions for the enforcement of such embargoes by fines and forfeitures in accordance with the customs laws, except as otherwise provided in the bill.

Whether this legislation should be enacted involves policy considerations as to which the Department of Justice defers to the Departments of State and Treasury. There is attached a memorandum of technical comments on the bill.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

RICHARD G. KLEINDIENST,
Deputy Attorney General.

MEMORANDUM OF TECHNICAL COMMENTS ACCOMPANYING THE REPORT OF THE DEPARTMENT OF JUSTICE ON H.R. 3304

1. On page 1, lines 3–7, change to read: "That the Fishermen's Protective Act of 1967 (68 Stat. 883, as amended, 82 Stat. 729) is amended by inserting at the end thereof the following new section:"

2. On page 3, line 14, substitute for the word "highest" the words "United States", so making it plain that the judges of the territorial courts there referred to are those of the district courts of the Virgin Islands and Guam, 48 U.S.C. 1405x and 1424, respectively.

3. On page 3, line 15, substitute for the word "court" the words "courts of American Samoa and". On June 2, 1967, the Secretary of the Interior ratified and approved, with an immaterial exception, the Revised Constitution of American Samoa which by its terms became effective on July 1, 1967. Article III, § 1, thereof established the High Court of American Samoa.

4. On page 4, line 10, delete the words "this provision of".

5. Section 8(d)(6) would expressly except from the provisions of 28 U.S.C. 2464 a stay of execution of process by the United States Marshal or other officer in seizures of fish and fishery products under § 8. That statute and the implementing Supplemental Admiralty Rule E(5)(c) of the Federal Rules of Civil Procedure establish a uniform procedure for such stay in seizures of property in an admiralty case upon the filing of a bond or stipulation in a specified amount. Under this procedure property in the Marshal's custody may be released forthwith upon his acceptance of a bond or stipulation signed by the party on whose behalf the property is detained or his attorney.

Ordinarily this procedure avoids the necessity for first obtaining the approval of the bond or stipulation by the district court. If the Rule were applicable to seizures under § 8, the Marshal could promptly release the fish and fishery products, generally perishable commodities, upon his acceptance of a bond or stipulation signed by the United States Attorney.

Section 8(d)(6) would, however, provide that such bond or stipulation for such release of fish and fishery products seized under § 8 must first be approved by the judge of the court or the United States Commissioner having jurisdiction of the offense. In some districts he may only be available at a place some distance from the port where fish or fishery products would be seized under § 8 or to which they would be brought after seizure for execution of process. The power of the Supreme Court to prescribe rules of procedure for the federal courts exists only in the absence of a relevant act of Congress. See *Palermo* v. *United States*, 360 U.S. 343, 353n[1](1959), and decisions there cited.

Since § 8(d)(6) would be a later enactment, it would supersede this rule in the case of seizures of fish and fishery products under § 8. In the absence of an adequate justification for denying the benefits of this Rule in the case of such seizures, the Department of Justice is of the view that § 8(d)(6) should be deleted from the bill. Moreover, its deletion would result in the maintenance of a uniform procedure in cases of stays of execution in seizures of property.

6. On page 5, line 14, change "its" to "their".

1. 79 S.Ct. 1217, 3 L.Ed.2d 1287.