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VETO STATEMENT ON H.R. 200

I am today returning without approval H.R. 200, an enrolled bill to extend the exclusive fishery management authority of the United States to 200 miles, and beyond with respect to certain species. I strongly support an extension of our fisheries jurisdiction to 200 miles. I have said I will sign a bill extending fisheries jurisdiction to 200 miles provided that all other provisions are satisfactory. I am eager to sign this session a bill that accomplishes this purpose. It is only because I cannot support certain provisions of H.R. 200 that I must now return it to the Congress for further consideration.

The assumption by the United States of exclusive fisheries jurisdiction over such a broad expanse of ocean space, previously regarded as high seas for fisheries and other purposes, requires the most careful consideration of means calculated to achieve a transition without conflict and confrontation with foreign nations. Our legislation must stand up as a model for responsible action by others. In my view, ~~however,~~ H.R. 200 falls short in a number of important respects.

First, H.R. 200 provides inadequate flexibility to make the transition to extended jurisdiction without unnecessary disputes and possible confrontations with nations that have traditionally fished off our coasts. The bill provides that, in



several important cases, vessels of these nations will be seized next March 1 unless a governing international fishery agreement is in force after laying before Congress for 60 days. Given the likely congressional calendar during the eight months preceding March 1, this has the effect of requiring that the new agreements be negotiated and concluded in the early summer.

In certain cases, an agreement may be negotiated, but the 60 day period may not have elapsed by March 1. The bill should authorize provisional application of these agreements during the 60 day period, without prejudice to the Congressional prerogative ^{of preventing} ~~to prevent~~ the entry into force of the agreement by subsequent statutory enactment. In other cases, negotiations may be in progress on March 1, 1977. The President should be authorized to defer enforcement with respect to a particular nation during such time as he determines that good faith negotiations are proceeding.

The bill also requires all foreign fishing vessels to have permits issued by the United States on board after March 1, 1977 even if the issuance of such permits places the United States in violation of existing ^{international} agreements. Where vessels are fishing under a multilateral treaty establishing a fisheries commission, the purpose of the permit requirement would be served if the bill permitted the acceptance of

registration permits issued pursuant to the terms of such a treaty.

Second, H.R. 200 contemplates unilateral enforcement of a prohibition on foreign fishing for anadromous species, such as salmon, seaward of the 200 mile zone. While such a prohibition is clearly necessary for the conservation of salmon stocks, we can only achieve it effectively under international agreements with affected States. In the absence of agreement, our actions would be considered lawless by others, and resulting disputes can only harm our relations with foreign nations.

Third, the bill contemplates prohibitions on imports from foreign nations in whose 200 mile zones our distant-water fishermen fish, if the foreign nation seizes our vessels without authorization from the United States or under other specified conditions. Yet the bill requires us to seize foreign vessels fishing in our zone without similar authorization from their governments.

This provision should be modified. *In addition to these defects in the bill,* ~~lastly,~~ a number of specific amendments are needed to conform the legislation to positions we are advancing at the Law of the Sea Conference and to avoid restrictions on the President's Constitutional responsibility for international negotiations. I am particularly concerned *for example,* that



the provisions on imprisonment of foreign fishermen will encourage other nations to take such action against our distant-water fishermen.

I do not regard these necessary amendments as altering the essential thrust and purpose of the bill. My difference with the Congress is solely one of the means best calculated to achieve our common objectives. I look forward to signing a revised bill during this session of the Congress.



TO THE HOUSE OF REPRESENTATIVES:

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THE WHITE HOUSE,



Signing Statement on H.R. 200

I am today signing a bill which provides a comprehensive domestic and international program for the conservation and management of our fisheries.

The extension of our jurisdiction to 200 miles will enable us to protect and conserve the valuable fisheries off our coasts. It is indeed unfortunate that the slow pace of the negotiations of the United Nations Law of the Sea Conference has mandated our course of action here today. ^{However,} ~~the~~ the foreign overfishing off our coasts ~~simply~~ cannot be allowed to continue ^{without} ~~any longer.~~
~~resolution.~~

The need for a timely and successful Law of the Sea Conference is even more pressing today than ever before. I have directed our negotiators to make every effort, consistent with our basic interests, to conclude the substantive negotiations this year. The bill I sign today is generally consistent with the consensus emerging at the Conference. It is ~~becoming~~ increasingly apparent that a failure to reach substantive agreement this year will ^{move} ~~steer~~ the world community ^{irrevocably} toward ~~increasing chaos~~ ~~and~~ disorder respecting competing use of the oceans. In the absence of a timely treaty, no nation can ~~rest~~ ^{be} assured



that its paramount interest in the oceans will be protected,

~~over time.~~

Some specific aspects of this legislation require comment. I supported this legislation on the condition that the effective date of the legislation would be

delayed ^{so that} ~~to give~~ the Law of the Sea Conference ^{adequate} ~~time to~~ complete its work and to ^{permit sufficient time for a} ~~enable us to effect a~~

^{proper} transition. ~~(without conflict and confrontation)~~

The tasks of continuing our negotiating efforts at the Law of the Sea Conference and at the same time establishing new fishery plans, issuing hundreds of new fishing permits/and negotiating specific fishery agreements with foreign governments will require ~~the concerned agencies to devote~~ substantial resources in excess of those presently allocated to international fisheries affairs. The Departments of State, Commerce, and Transportation must do their best to implement the Act fully. Since available resources are finite, however, it is possible that full implementation may take more time than is provided in the Act.

I am concerned about our ability to fulfill the tasks in the time and manner provided in the Act. I



am ~~also concerned~~ *particularly anxious* that no action be taken which would compromise our commitment to protect the freedom of navigation and the welfare of our distant water fisheries. Surely we would not wish to see the United States engaged in international disputes because of an absence of needed flexibility.

Additionally, I am concerned about four specific problem areas which are raised by this legislation:

First, absent affirmative action, the subject bill could raise serious impediments for the United States in meeting its obligations under existing treaty and agreement obligations;

Second, the bill contemplates unilateral enforcement of a prohibition on foreign fishing for native anadromous species, such as salmon, seaward of the 200-mile zone. Enforcement of such a provision, absent bilateral or multilateral agreement, would be contrary to the sound precepts of international jurisprudence;



Third, the enforcement provisions of H.R. 200 dealing with the seizure of unauthorized fishing vessels, lack adequate assurances of reciprocity in keeping with the tenets of international law; and

Fourth, the measure purports to encroach upon the exclusive province of the Executive relative to matters under international negotiations.

Although these matters are of major ^{importance,} ~~importance,~~ I am hopeful they can be resolved by responsible administrative action and, if necessary, by curative legislation. Accordingly, I am instructing the Secretary of State to lead Administration efforts toward ^{their} ~~an~~ effective resolution, ~~of these~~ ~~matters.~~



STATEMENT BY THE PRESIDENT

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Office of the White House Press Secretary

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GERALD R. FORD

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MARINE FISHERIES CONSERVATION ACT OF 1975

AUGUST 20, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mrs. SULLIVAN, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

together with

SUPPLEMENTARY and DISSENTING VIEWS

[To accompany H.R. 200]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H. R. 200) to extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Marine Fisheries Conservation Act of 1975".

SEC. 2. CONGRESSIONAL FINDINGS, POLICY, AND PURPOSES.

(a) **FINDINGS.**—The Congress finds and declares the following:

(1) Coastal species of fish which inhabit the waters adjacent to the United States, highly migratory species of the high seas, species which dwell on or in the Continental Shelf, and anadromous species which spawn in United States rivers and estuaries, constitute an irreplaceable resource which contribute to the food supply and economy of the Nation as well as to the health and recreation of its people.

(2) Stocks of fish which United States fishermen depend upon have been the target of concentrated foreign fishing which has increased dramatically during the past decade. Certain coastal and anadromous species are depleted to the point where the survival of the fisheries is threatened and others have been substantially reduced in number, as the result of continued overfishing and failure to initiate or to observe sound conservation practices.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon the fishing industry as the foundation of the local economy. The depletion of fishery resources at an ever-increasing rate over the past decade threatens the social and economic fabric of those coastal regions where fishing and related activities are the principal source of employment.

(4) United States fishermen, confronted by massive foreign fishing fleets in coastal waters of the United States, have suffered extensive interference with their fishing efforts and destruction of their gear under circumstances which render it virtually impossible to secure compensation.

(5) International agreements have not been effective in halting the depletion of valuable coastal and anadromous species caused by such over-fishing; and even to the extent that international agreements might ultimately prove to be effective, there is danger that irreversible depletion of such species will take place before such agreements can be negotiated, signed, ratified, and implemented.

(6) Fishing for coastal and anadromous species is carried out in part on the high seas off the coasts of the United States by United States and foreign vessels where no regime of law, except for specific international agreements, applies to govern fishing or to require conservation practices.

(7) Fisheries resources are renewable and if placed under sound management before depletion has caused irreversible effects, can be restored to provide optimum sustainable yield. It is therefore in the national interest and in the interest of all nations and peoples engaged in fishing on the high seas to provide effective management programs that will both maintain the optimum sustainable yield of fisheries resources and support the commercial and recreational fishing industries.

(8) Developing international law, as proposed in the informal single negotiating text recently prepared at the Third United Nations Conference on the Law of the Sea, proposes primary coastal State management and preference over coastal species in an economic zone extending to 200 miles beyond the baseline of the territorial sea, and primary host State management and preference over anadromous species.

(b) POLICY AND PURPOSES.—It is therefore declared to be the policy and purposes of the Congress under this Act—

(1) to conserve and manage the fisheries resources found off the coasts of the United States and the anadromous fisheries resources of the United States in the high seas by establishing an exclusive fisheries conservation and management zone in the area extending 200 nautical miles seaward of the United States within which the United States will assume management responsibility and authority over all fisheries resources, except highly migratory species, and by declaring fisheries management responsibility and authority on the high seas beyond such zone with respect to anadromous species;

(2) to support and encourage international measures for the conservation and management of highly migratory species on the basis of regulations consistent with the terms of any applicable international fisheries agreement;

(3) to promote the commercial and recreational fishing industries of the United States in order to maximize under sound conservation and management principles the production of food from the sea and the recreational opportunities of the American people;

(4) to establish management programs which will achieve and maintain an optimum sustainable yield from fisheries resources under circumstances which will enable the States, the fishing industry, consumer and environmental organizations and other interested persons to participate in or advise on the establishment of management plans and regulations, and in the development of such programs in regard to stocks of fish, to consider the social and economic needs of the coastal States along which such stocks abound;

(5) to permit foreign fishing within the fisheries zone established by title I of this Act consistent with the conservation requirements of the various stocks, if there are excess stocks of fish not being utilized to the optimum sustainable yield by United States commercial or recreational fishermen, after there is taken into account the efforts of United States fishermen to develop new and expanded fisheries, and the fact that certain stocks of fish which United States fishermen have been heavily dependent upon are now seriously depleted largely as a result of foreign fishing;

(6) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty at the Third United Nations Conference on the Law of the Sea, and particularly to seek effective conservation of living ocean resources;

(7) to maintain without change the existing jurisdiction and rights of the United States in the Continental Shelf and the waters superjacent thereto for all purposes, other than the protection and conservation of fisheries resources as provided by this Act; and

(8) not to authorize any impediment to, or interference with, lawful activities on the high seas, except with respect to the protection and conservation of fisheries resources as provided by this Act.

SEC. 3. DEFINITIONS.

For purposes of this Act—

(1) The term "anadromous species" means those species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "coastal species" means all species of fish other than any species referred to in paragraphs (1), (3), and (13) of this section.

(3) The term "Continental Shelf species" means any Continental Shelf fishery resource as defined in section 5(a) of the Act of May 20, 1964 (78 Stat. 196; 16 U.S.C. 1085(a)).

(4) The term "depleted", when used with reference to any species of fish, means that a stock of the species has been so reduced, as a result of over-fishing or any other cause induced by man, or as a result of any natural cause, that a substantial reduction in fishing effort must be immediately achieved in order that the stock can replenish itself and once again provide an optimum sustainable yield.

(5) The term "fisheries zone" means the fisheries conservation and management zone established by title I of this Act.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than birds or marine mammals.

(7) The term "fishery" means the business, organized activity, or act of fishing for a particular stock or species of fish (or for two or more stocks or species which are caught simultaneously or otherwise caught together) which by virtue of its geographical, scientific, technical, recreational, and economic characteristics is capable of being regulated as a unit.

(8) The term "fishing" means the catching, taking, harvesting, or attempted catching, taking, or harvesting, or any action which can reasonably be expected to result in the catching, taking, or harvesting, of fish for any purpose, and any activity at sea in support thereof.

(9) The term "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—

(A) fishing; or

(B) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, supply, storage, refrigeration, transportation, or processing.

(10) The term "high seas" means all waters beyond the territorial sea of the United States.

(11) The term "international fisheries agreement" means any bilateral or multilateral treaty, convention, or agreement relating to fishing to which the United States is a party.

(12) The term "Marine Fisheries Commission" includes the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, and the Pacific Marine Fisheries Commission established by interstate compact.

(13) The term "highly migratory species" means any species of fish which spawn and migrate during their life cycle in waters of the high seas, in and outside the fisheries zone, including, but not limited to, tuna; but excluding halibut, sablefish, and herring.

(14) The term "optimum sustainable yield" means a yield which provides the greatest benefit to the United States as determined on the basis of the maximum sustainable yield of a stock or stocks of fish as modified by relevant ecological, economic, and social factors.

(15) The term "person" means any individual, corporation, partnership, or association (whether or not such individual is a citizen or national of the United States, or such entity is organized or existing under the laws of any State), and any government or entity thereof.

(16) The term "Secretary" means the Secretary of Commerce.

(17) The term "State" means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the possessions of the United States.

(18) The term "stock" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(19) The term "United States" when used in a geographical context, means all the States thereof.

TITLE I—ESTABLISHMENT OF UNITED STATES FISHERIES CONSERVATION AND MANAGEMENT ZONE EXTENDING TO THE 200-MILE LIMIT

SEC. 101. ESTABLISHMENT OF FISHERIES CONSERVATION AND MANAGEMENT ZONE.

There is hereby established a fisheries conservation and management zone (hereinafter referred to in this title as the "zone") contiguous to the territorial sea of the United States. The seaward boundary of the zone shall be a line drawn so that each point on the line is 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.

SEC. 102. EXCLUSIVE RIGHTS OF UNITED STATES WITHIN ZONE.

The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea. Fishing by foreign states within the zone will be permitted as may be recognized on or after July 1, 1976, by the United States pursuant to the provisions of this Act.

SEC. 103. ADJUSTMENT OF BOUNDARY.

Whenever the President determines that a portion of the zone conflicts with the territorial waters or fisheries zone of another country, he may establish a seaward boundary for such portion of the zone in substitution for the seaward boundary described in section 101.

SEC. 104. STATE JURISDICTION.

Nothing in this Act shall be construed—

- (1) as extending the jurisdiction of any State to any natural resource beneath and in the waters within the zone;
- (2) as diminishing the jurisdiction of any State over any natural resource beneath and in its internal waters; or
- (3) except as may be provided pursuant to section 309, as diminishing the jurisdiction of any State to any natural resource beneath and in the waters of the territorial sea of the United States.

SEC. 105. REPEALER.

The Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094), is repealed.

SEC. 106. EFFECTIVE DATE.

This title shall take effect July 1, 1976.

TITLE II—INTERNATIONAL FISHERIES AGREEMENTS

SEC. 201. FISHING BY FOREIGN VESSELS IN THE FISHERIES ZONE AND SEAWARD OF THE ZONE FOR MANAGED ANADROMOUS SPECIES.

(a) PERMITS REQUIRED OF FOREIGN VESSELS.—No fishing vessel, except a vessel documented under the laws of the United States or registered under the laws of any State, shall engage in fishing within the fishery zone, or fishing seaward of the fishery zone for any anadromous species with respect to which a fishery management plan implemented pursuant to title III of this Act applies, unless such vessel has on board a valid permit issued by the Secretary pursuant to this section.

(b) APPLICATION FOR PERMITS.—Any foreign nation seeking a permit referred to in subsection (a) on behalf of one or more vessels registered under its flag may file an application therefor with the Secretary of State. Any application shall—

- (1) state the name and official number of each fishing vessel for which a permit is sought;

(2) set forth the tonnage, capacity, speed, processing equipment, gear, and such other characteristics of each vessel as the Secretary may require;

(3) specify the species of fish for which the vessel or vessels will fish;

(4) specify the amount of fish or tonnage of catch contemplated;

(5) specify the ocean area in which, and the season or period during which, such fishing will be conducted; and

(6) set forth such other pertinent information as the Secretary may require.

(c) TRANSMISSION OF APPLICATION FOR ACTION.—Upon receipt of any application referred to in subsection (b), the Secretary of State shall—

(1) promptly transmit such application, together with his comments and recommendations thereon, to the Secretary, and

(2) transmit a copy of the application to the Secretary of the department in which the Coast Guard is operating.

(d) TENTATIVE APPROVAL OF APPLICATION AND PREPARATION OF STATEMENT OF CONDITIONS AND RESTRICTIONS.—Upon receipt of any application, and after consultation with the Secretary of the department in which the Coast Guard is operating with respect to enforcement and after taking into consideration the views and recommendations of the Secretary of State and the appropriate regional marine fisheries council, the Secretary, if he determines that the fishing activity proposed in the application is consistent with the policy and purposes of this Act and with the national fisheries management standards set forth in section 302(c), and after taking into account any traditional or historical patterns of fishing by the applicant nation for the species of fish covered in the application, shall tentatively approve the application (subject to the provisions of subsection (e)) and shall prepare a statement of the conditions and restrictions which will apply to the fishing in which the foreign vessels propose to engage and to which the foreign country must agree before any permit may be issued under this section. Any statement of conditions and restrictions shall include—

(1) any adjustment deemed necessary by the Secretary in the number of fishing vessels for which permits may be issued;

(2) if the vessels will engage in fishing for a species for which a fishery management plan has been implemented pursuant to title III of this Act (hereinafter referred to in this section as a "managed species") all requirements imposed by such plan;

(3) if the vessels will engage in fishing for other than a managed species, such conditions and restrictions with respect to tonnage, season, catch, gear requirements, and statistical reporting as the Secretary deems appropriate for the species concerned;

(4) enforcement conditions, including but not limited to—

(A) procedures which will apply with respect to the boarding and inspection of the vessels, including the requirement that the permit issued to any vessel pursuant to this section must be prominently displayed in the wheelhouse of the vessel and must be promptly surrendered to any officer authorized to enforce the provisions of this Act at the time of his boarding,

(B) requirements for on-board observers and reimbursement to the United States for the costs of such observers, and

(C) prepayment of any license fees which may be levied in the case of a managed species;

(5) in any case in which subsection (c) applies, a further condition that any other condition and restriction imposed pursuant to this subsection shall be provisionally applicable until such time as the fishery management plan is implemented and may be unilaterally amended by the Secretary after such implementation in such manner as may be necessary to conform them to the plan requirements; and

(6) any other conditions and restrictions which the Secretary deems necessary or appropriate.

(e) SPECIAL CONSIDERATIONS IN CASE OF APPLICATION TO FISH FOR SPECIES FOR WHICH FISHERY MANAGEMENT PLAN IS BEING DEVELOPED.—The Secretary may tentatively approve an application for fishing by foreign vessels for a species with respect to which a fishery management plan is being developed by a regional marine fisheries council or by the Secretary under title III of this Act only if the Secretary determines that the species is not depleted.

(f) CONGRESSIONAL ACTION ON APPLICATION.—Any application tentatively approved by the Secretary, together with the statement of conditions and restrictions prepared by the Secretary pursuant to subsection (d)—

- (1) shall be deemed, for the purposes of section 206, to be an international fisheries agreement; and

(2) shall be transmitted by the Secretary to the President for delivery to Congress pursuant to section 206(a)(1).

(g) **ISSUANCE OF PERMITS.**—If neither the House of Representatives nor the Senate disapproves an application pursuant to section 206, the Secretary of State shall transmit to the foreign nation concerned a statement of conditions and restrictions prepared by the Secretary with respect to the application. Upon acceptance of the conditions and restrictions by the foreign nation, the Secretary shall issue to the Secretary of State a permit for each fishing vessel entitled thereto. The Secretary of State shall promptly transmit the permits to the foreign nation for distribution to the operators of such vessels.

(h) **SUSPENSION OR REVOCATION OF PERMITS.**—

(1) **REPEATED VIOLATIONS.**—If the Secretary finds that any fishing vessel to which a permit is issued pursuant to this section has been repeatedly used in the commission of acts prohibited by section 310(2) for which civil penalties are assessed pursuant to section 311, the Secretary may suspend the permit for such period of time as he deems appropriate, or may revoke the permit.

(2) **FAILURE TO PAY ASSESSMENT.**—In any case in which any fishing vessel to which a permit is issued pursuant to this section—

(A) is used in the commission of any act prohibited by section 310(2) and is not seized pursuant thereto; and

(B) a civil penalty is assessed pursuant to section 311 for such act, the Secretary shall, if such assessment is not paid within a reasonable time after the date of the assessment, suspend the permit until such time as the assessment is paid.

(3) **PENALTY FOR FISHING DURING PERIOD OF PERMIT REVOCATION OR SUSPENSION.**—Any fishing by a foreign vessel in the fishery zone, or seaward of the fishery zone for any anadromous species with respect to which a fishery management plan is implemented pursuant to title III of this Act, during the period in which any permit issued pursuant to this section to such vessel is suspended or revoked pursuant to this subsection, shall be deemed to be a violation of the Act of May 20, 1964 (as amended by section 402 of this Act).

(i) **ISSUANCE OF WARNINGS.**—In any case in which any officer authorized to enforce the provisions of this Act finds that a fishing vessel to which a permit has been issued under subsection (g) has been operated in such a manner as to constitute a violation of a condition or restriction accepted by the foreign nation concerned but that such violation is, in his judgment, a minor infraction, the officer may, in lieu of citing the master of such vessel for violation of section 310(2), issue the master of the vessel a warning. Any warning issued pursuant to this subsection shall be noted in writing on the permit.

(j) **APPLICATION AND PERMIT FORMS.**—The Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form for applications submitted pursuant to subsection (b) and for permits issued pursuant to subsection (g). The form prescribed for permits shall provide for the inclusion of such information as may be necessary to inform officers authorized to enforce the provisions of this Act of those conditions and restrictions accepted pursuant to subsection (g) which apply to the vessel.

(k) **SPECIAL TREATMENT FOR FISHERY MANAGEMENT PLANS WHICH APPLY SEAWARD OF THE FISHERIES ZONE TO ANADROMOUS SPECIES.**—

(1) **PLANS DEEMED UNILATERAL CONSERVATION MEASURES.**—Any fishery management plan prepared pursuant to section 304 or 305(d) which in whole or part applies with respect to any anadromous species in any area of the high seas seaward of the fisheries zone shall be deemed to be a unilateral measure of conservation of the United States within the meaning of article 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas.

(2) **SUSPENSION OF TAKING EFFECT OF PLAN.**—Notwithstanding any other provision of this Act, no fishery management plan referred to in paragraph (1), to the extent that it applies seaward of the fisheries zone, shall enter into force and effect until the close of the 6-month period immediately following the date of the promulgation of the regulations necessary to implement the plan. During such 6-month period, the Secretary of State shall—

(A) enter into negotiations pursuant to such article 7 with the other contracting parties to such Convention for the purpose of securing the consent of the contracting parties to such plan and the regulations implementing such plan; and

(B) enter into such other bilateral or multilateral negotiations as may be appropriate in order to obtain the consent of any foreign nation to such plan and the regulations implementing such plan.

(3) **ENTERING INTO FORCE AND EFFECT OF PLAN.**—After the close of the 6-month period referred to in paragraph (2), the fishery management plan concerned, to the extent that it applies seaward of the fisheries zone, and the regulations implementing such plan shall have force and effect within the area seaward of the fisheries zone to which it applies.

(4) **SUSPENSION OF ENFORCEMENT BY THE UNITED STATES OF PLAN SEAWARD OF THE FISHERIES ZONE.**—If permits are issued pursuant to subsection (g) to fishing vessels of any foreign nation which authorizes them to engage in fishing for any anadromous species to which management plan referred to in paragraph (1) of this subsection applies, the United States shall not enforce the conditions and restrictions imposed with respect to such permits if the foreign nation gives written assurance to the Secretary of State that it will regulate such vessels in accordance with such conditions and restrictions. This paragraph shall only apply if, and during such time as, the Secretary, after consultation with the Secretary of State, finds that—

(A) the penalties imposed by the foreign nation on its vessels are equivalent to the penalties imposed pursuant to section 311 for violation of any such condition or restriction; and

(B) such foreign nation stringently assesses such penalties against its vessels or nationals which violate such conditions and restrictions.

(l) **CONTINENTAL SHELF SPECIES.**—Nothing in titles I, II, or III of this Act shall be construed to extend to any vessel not documented under the laws of the United States, or not registered under the laws of any State, the right or privilege to engage in fishing for any Continental Shelf species.

SEC. 202. TREATMENT OF CERTAIN EXISTING INTERNATIONAL FISHERIES AGREEMENTS.

(a) **APPLICATION OF ACT TO EXISTING AGREEMENTS.**—No international fisheries agreement other than an agreement which is a treaty within the meaning of section 2 of article II of the Constitution, which is in effect on July 1, 1976, and which pertains to fishing in the waters described in title I of this Act or which pertains to species or stocks of fish, or fisheries, with respect to which the United States may exercise management and conservation authority pursuant to this Act, shall be extended or renewed except pursuant to this Act.

(b) **RENEGOTIATION OF TREATIES.**—The Secretary of State, in consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall initiate promptly after the date of the enactment of this Act, the renegotiation of all treaties within the meaning of section 2 of article II of the Constitution which pertain to fishing in the waters described in title I of this Act or which pertain to species, or stocks of fish, or fisheries, with respect to which the United States may exercise management and conservation authority pursuant to this Act, in order to conform such treaties to the provisions and requirements of this Act.

(c) **REPORTS TO CONGRESS.**—The Secretary of State shall submit to the Congress a written report on or before May 15, 1976, and annually thereafter, on the results of the negotiations which he is required to initiate under subsection (b).

SEC. 203. NEGOTIATIONS TO PRESERVE CERTAIN UNITED STATES FOREIGN FISHING RIGHTS.

(a) **COMMENCEMENT OF NEGOTIATIONS.**—Within 90 days after the date of enactment of this Act, the Secretary of State shall commence negotiations with each foreign nation, off of whose coast United States vessels are engaged in fishing for specific stocks of fish, for the purpose of entering into an international fishery agreement under which such foreign nation will grant to United States vessels equitable access, consistent with reasonable management and conservation practices, to such fish stocks within 200 nautical miles off the coast of such nation.

(b) **ACTION IF FOREIGN NATION REFUSES TO NEGOTIATE OR VIOLATES TREATY.**—

(1) If the Secretary of State determines that—

(A) any foreign nation is refusing to commence negotiations, or fails to negotiate in good faith, with the United States in order to achieve the purpose of subsection (a); or

(B) although an international fishery agreement which achieves the purpose of subsection (a) is in force and effect, the foreign nation is not complying with its obligations under the agreement,

he shall certify that determination to the Secretary of the Treasury. Upon receipt of any such certification, the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the customs territory of the United States of any seafood product of that foreign nation.

(2) For purposes of this subsection, any seizure of a United States vessel which is reimbursable under section 3 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1972) that is made by any foreign nation off whose coast United States vessels are engaged in fishing for specific stocks of fish shall—

(A) if no international fisheries agreement achieving the purpose of subsection (a) is in force and effect, be deemed to be a refusal by that nation to commence negotiations, or failure by that nation to negotiate in good faith, within the meaning of paragraph (1)(A) of this subsection, or

(B) if such an agreement is in force and effect, be deemed to be noncompliance by that nation with its obligations under that agreement within the meaning of paragraph (1)(B) of this subsection,

and the Secretary of State shall immediately make the appropriate certification to the Secretary of the Treasury required by paragraph (1) of this subsection.

(c) DURATION OF IMPORT PROHIBITION.—Any import prohibition which is imposed pursuant to subsection (b) shall remain in effect—

(1) if the prohibition was imposed by reason of subsection (b)(1), until such time as the Secretary of State certifies to the Secretary of the Treasury that an international fisheries agreement which achieves the purposes of subsection (a) has entered into force and effect between the United States and that foreign nation; or

(2) if the prohibition was imposed by reason of subsection (b)(2), until such time as the Secretary of State certifies to the Secretary of the Treasury that the foreign nation is complying with its obligations under the international fishery agreement.

(d) DEFINITION.—For purposes of this section, the term "seafood product" means any fish which is the product of a foreign nation, and any article which is the product of such nation and which is composed in whole or part of any fish which is the product of such nation; but excludes during the period of any import prohibition imposed pursuant to subsection (b) any such fish or article if the fish or fish constituting the article are harvested by United States vessels, irrespective of point of harvesting or offloading.

SEC. 204. NEGOTIATIONS REGARDING HIGHLY MIGRATORY SPECIES.

The Secretary of State, upon the request of, and in cooperation with, the Secretary, shall initiate and conduct negotiations with any foreign nation participating in a fishery for any highly migratory species for the purpose of entering into international fisheries agreements that would establish an appropriate international fisheries organization having authority to manage and conserve such highly migratory species.

SEC. 205. MULTILATERAL CONVENTION.

If the United States ratifies a multilateral convention resulting from any United Nations Conference on the Law of the Sea which contains provisions with respect to the breadth of the territorial sea and the fisheries or economic zone, the Secretary, in consultation with the Secretary of State, may promulgate pursuant to section 307 such changes, if any, in the regulations issued pursuant to this Act as may be necessary or desirable to conform such regulations with the provisions of such convention in anticipation of the date when such convention shall come into force and effect or otherwise be applicable to the United States.

SEC. 206. CONGRESSIONAL DISAPPROVAL OF CERTAIN INTERNATIONAL FISHERIES AGREEMENTS.

(a) TAKING EFFECT OF INTERNATIONAL FISHERIES AGREEMENTS.—Any international fishery agreement (other than an agreement which is a treaty within the meaning of section 2 of article II of the Constitution) entered into after the date of the enactment of this Act, and any amendment entered into after such date to any international fishery agreement entered into before such date, shall enter into force and effect with respect to the United States if (and only if)—

(1) the President delivers a copy of the agreement to the House of Representatives and a copy to the Senate; and

(2) before the close of the 60-day period which begins on the day on which copies of such agreement are delivered to the House of Representatives and

to the Senate, neither the House of Representatives nor the Senate adopts, by an affirmative vote of the majority of those present and voting in that House, a resolution of disapproval.

(b) RESOLUTION OF DISAPPROVAL.—For purposes of this section, the term "resolution of disapproval" means only a resolution of either House of Congress, the matter after the resolving clause of which is as follows: "That the does not favor the taking effect of the international fishery agreement transmitted to the Congress by the President on _____", the first blank space therein being filled with the name of the resolving House and the second blank space therein being filled with the day and year.

(c) PROCEDURE IN EACH HOUSE.—

(1) A resolution of disapproval in the House of Representatives shall be referred to the Committee on Merchant Marine and Fisheries. A resolution of disapproval in the Senate shall be referred to the Committee on Commerce.

(2)(A) If the committee to which a resolution of disapproval has been referred has not reported it at the end of 7 calendar days after its introduction, it is in order to move either to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of any other resolution of disapproval of the same international fishery agreement which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, is highly privileged (except that it may not be made after the committee has reported a resolution of disapproval), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed, nor may another motion to discharge the committee be made with respect to any other resolution of disapproval of the same international fishery agreement.

(3)(A) When the committee has reported, or has been discharged from further consideration of, a resolution of disapproval, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. An amendment to the motion is not in order, and it is not in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate on the resolution of disapproval shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order, and it is not in order to move to reconsider the vote by which the resolution is agreed to or disagreed to.

(4)(A) Motions to postpone, made with respect to the discharge from committee or the consideration of a resolution of disapproval, and motions to proceed to the consideration of other business, shall be decided without debate.

(B) Appeals from the decisions of the Chair relating to the application of the rules of the House of Representatives or the Senate, as the case may be, to the procedure relating to any resolution of disapproval shall be decided without debate.

(5) Whenever the President transmits copies of any international fisheries agreement to the Congress, a copy of such agreement shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives if the House is not in session and to the Secretary of the Senate if the Senate is not in session.

(6) This subsection is enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and as such it is deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions of disapproval described in subsection (b); and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as in the case of any other rule of that House.

TITLE III—MANAGEMENT OF THE FISHERIES

SEC. 301. UNITED STATES JURISDICTION OVER CERTAIN FISHERIES.

(a) **IN GENERAL.**—The fisheries management responsibility and authority of the United States extends to—

- (1) any coastal species within the fisheries zone;
- (2) any anadromous species wherever found throughout the range of such species in the high seas; and
- (3) any Continental Shelf species.

(b) **INTERNATIONAL REGULATION OF HIGHLY MIGRATORY SPECIES.**—The fisheries management responsibility and authority of the United States under this Act does not extend to highly migratory species, and the United States shall not recognize the right of any foreign country to extend its rights, claims, or jurisdiction to such species. Such species shall be managed pursuant to international fishery agreements established for such purpose.

SEC. 302. FISHERIES MANAGEMENT RESPONSIBILITIES OF THE SECRETARY

(a) **IN GENERAL.**—Subject to the provisions of this Act, the Secretary shall manage all fisheries over which the United States has fishery management responsibility and authority under section 301(a). The management of any such fishery shall result in the regulation of fishing in that fishery by any vessel documented under the laws of the United States or registered under the laws of any State and by any other vessel in such manner as is necessary and appropriate to carry out the policy and purposes of this Act.

(b) **MANAGEMENT PURSUANT TO MANAGEMENT PLAN.**—Except as provided in section 305(d) or 308, the Secretary may not manage any fishery under the authority of subsection (a) except in accordance with a management plan which is prepared pursuant to section 304 for such fishery.

(c) **NATIONAL FISHERIES MANAGEMENT STANDARDS.**—The management of the fisheries pursuant to this Act shall be consistent with the following national fisheries management standards:

- (1) Management and conservation measures shall be based upon the best scientific biological information available.
- (2) To the extent possible, an individual stock of fish shall be managed throughout its range.
- (3) Management and conservation measures shall not discriminate between residents of different States.
- (4) Management and conservation measures shall be designed to achieve the optimum sustainable yield of a stock of fish on a continuing basis.
- (5) Management and conservation measures shall promote efficiency in harvesting techniques.
- (6) Management and conservation measures shall be formulated to allow for unpredicted variations in fishery resources and their environment and for possible delay in the application of such measures.
- (7) Management and conservation measures shall not result in unreasonable administration or enforcement costs.
- (8) Management and conservation measures shall be designed to prevent depletion of fisheries resources.

SEC. 303. REGIONAL MARINE FISHERIES COUNCILS.

(a) **ESTABLISHMENT.**—There are established seven regional marine fisheries councils to be known respectively as the New England Marine Fisheries Council, the Mid-Atlantic Marine Fisheries Council, the Southern Atlantic Marine Fisheries Council, the Gulf Marine Fisheries Council, the Pacific Marine Fisheries Council, the Alaska Marine Fisheries Council, and the Western Pacific Marine Fisheries Council (hereinafter referred to in this Act as the "Council" or the "Councils"). The States represented by each respective Council shall be as follows:

New England Marine Fisheries Council

Maine;
New Hampshire;
Massachusetts;
Rhode Island; and
Connecticut.

Mid-Atlantic Marine Fisheries Council

New York;
New Jersey;
Delaware;
Pennsylvania;
Maryland; and
Virginia.

Southern Atlantic Marine Fisheries Council

North Carolina;
South Carolina;
Georgia;
Florida;
The Commonwealth of Puerto Rico; and
The Virgin Islands.

Gulf Marine Fisheries Council

Texas;
Louisiana;
Mississippi;
Alabama;
Florida;
The Commonwealth of Puerto Rico; and
The Virgin Islands.

Pacific Marine Fisheries Council

California;
Oregon;
Washington; and
Idaho.

Alaska Marine Fisheries Council

Alaska;
Oregon; and
Washington.

Western Pacific Marine Fisheries Council

Hawaii;
American Samoa; and
Guam.

(b) MEMBERSHIP OF COUNCILS.—

(1) **NUMBER AND APPOINTMENT.**—Each Council established by subsection (a) shall consist of the following members:

(A) the Executive Director of the Marine Fisheries Commission for the geographical area concerned;

(B) one member appointed by, and serving at the pleasure of, the Governor or chief executive officer of each State represented on the Council; except that in the case of the Alaska Marine Fisheries Council, three members appointed by the Governor of Alaska;

(C) the Regional Director of the National Marine Fisheries Service for the geographical area concerned;

(D) the Regional Director of the United States Fish and Wildlife Service for the geographical area concerned;

(E) six members (other than officers or employees of the Federal Government or of any State government) appointed by the Secretary from a list prepared by the members specified in subparagraphs (A), (B), (C), and (D) of this paragraph of not less than 20 individuals having knowledge and experience in commercial or recreational fishing, and such appointments shall fairly reflect the degree to which commercial and recreational fishermen participate in the fisheries in the geographical area concerned; and

(F) two members (other than officers or employees of the Federal Government or of any State government or individuals referred to in subparagraph (E)) who shall represent the public interest and who shall be appointed by the Secretary from a list prepared by the members specified in subparagraphs (A), (B), (C), and (D) of this paragraph of not less than six individuals.

A vacancy in any Council shall be filled in the manner in which the original appointment was made.

(2) **CONTINUATION OF MEMBERSHIP.**—If any member of any Council who was appointed to such Council pursuant to paragraph (1) (A), (C), or (D) leaves the office he is holding at the time of appointment, or if any member of any Council who was appointed from persons who are not officers or employees of any government becomes an officer or employee of any government, he may continue as a member of such Council for not longer than the 90-day period beginning on the date he leaves that office or becomes such an officer or employee, as the case may be.

(3) **TERMS.**—

(A) Except as provided in subparagraphs (B) and (C) of this paragraph, any member appointed pursuant to paragraph (1) (E) or (F) shall be appointed for a term of 3 years.

(B) Of the members first appointed pursuant to paragraph (1) (E)—
 (i) two shall be appointed for a term of 1 year,
 (ii) two shall be appointed for a term of 2 years, and
 (iii) two shall be appointed for a term of 3 years,
 as designated by the Secretary at the time of appointment.

(C) Of the members first appointed pursuant to paragraph (1) (F)—
 (i) one shall be appointed for a term of 2 years; and
 (ii) one shall be appointed for a term of 3 years,
 as designated by the Secretary at the time of appointment.

(D) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(E) Any individual appointed pursuant to paragraph (1) (E) or (F) is eligible for reappointment.

(c) **PAY AND TRAVEL EXPENSES.**—

(1) **PER DIEM RATE.**—Members of each Council, other than members who are full-time officers or employees of the United States or any State, shall each be entitled to receive \$100 for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Council.

(2) **TRAVEL EXPENSES.**—While away from their homes or regular places of business in the performance of services for any Council, the members thereof shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5 of the United States Code.

(d) **TRANSACTION OF BUSINESS.**—

(1) **QUORUM.**—A majority of the members of any Council shall constitute a quorum, but a lesser number may hold hearings.

(2) **CHAIRMEN.**—A Chairman for each Council shall be elected by the members of each Council from among members appointed pursuant to subsection (b) (1) (B), (E), (F).

(3) **MEETINGS.**—Each Council shall meet at the call of the Chairman or a majority of its members, but shall meet for at least 1 day during each calendar quarter.

(e) **STAFF AND ADMINISTRATION.**—

(1) **COUNCIL STAFF.**—The Secretary shall make available to each Council such staff, information, and personnel services as it may reasonably require to carry out its functions.

(2) **DETAIL OF FEDERAL PERSONNEL.**—Upon request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Council to assist it in carrying out its functions under this Act.

(3) **SUPPORT SERVICES.**—The Administrator of General Services, after consultation with the Secretary, shall provide to any Council on a reimbursable basis such administrative support services as the Council may request.

(4) **STATEMENT OF ORGANIZATION.**—Each Council, after consultation with the Secretary, shall publish and make available to the public a statement of the organization, procedure and practices of the Council.

(f) **ADVISORY PANELS.**—Each Council may establish advisory panels to assist the Council in carrying out its functions under this Act.

(g) **FUNCTIONS.**—

(1) **IN GENERAL.**—Each Council shall—

(A) solicit, by means of public hearings to the extent practicable, and evaluate on a continuing basis comments and recommendations from all interested persons in the geographical area concerned with respect to the administration and implementation of the provisions of this Act;

(B) develop fishery management plans pursuant to section 304 for adoption by the Secretary, and take such other actions with respect to fishery management plans as may be required by such section; and

(C) submit to the Secretary, within 30 days after the close of each calendar quarter, a report setting forth the results of the Council's activities under this Act during such quarter.

(2) **STATEMENTS OF DISAGREEMENT.**—If any matter submitted to the Secretary pursuant to subparagraph (B) or (C) of paragraph (1) did not receive the unanimous vote of the Council, the members of the Council in disagreement may submit to the Secretary a statement setting forth the reasons for their disagreement.

SEC. 304. PREPARATION OF FISHERY MANAGEMENT PLANS BY COUNCILS.

(a) **PLANS PREPARED ON INITIATIVE OF COUNCIL OR AT REQUEST OF SECRETARY.**—

(1) **ON INITIATIVE OF COUNCIL.**—Any Council may at any time prepare a fishery management plan with respect to any species referred to in section 301(a).

(2) **AT REQUEST OF SECRETARY.**—The Secretary may request any Council to prepare a fishery management plan with respect to any species referred to in section 301(a).

(3) **APPLICATION OF PLANS.**—Any fishery management plan prepared pursuant to paragraph (1) or (2) shall be limited to species in the fisheries zone (and seaward of the zone in the case of anadromous species and Continental Shelf species) adjacent to the States represented on the Council. In any case in which the range of a species includes waters within the fisheries zone which are adjacent to States represented on more than one Council, the Secretary shall designate which Council shall prepare the fishery management plan.

(b) **SCOPE OF MANAGEMENT PLANS.**—

(1) **IN GENERAL.**—Any fishery management plan which is prepared by any Council shall—

(A) contain the conservation and other measures which the Council deems appropriate with respect to the management of the species or the fishery concerned; and

(B) specify such conditions and limitations governing fishing by any vessel documented under the laws of the United States or registered under the laws of any State, or by any other vessel, which the Council believes should be implemented to carry out such measures within the territorial sea of the United States, the fisheries zone, and, in the case of any anadromous species or Continental Shelf species, in waters seaward of such zone.

(2) **INFORMATION WITH RESPECT TO RELEVANT INTERNATIONAL OBLIGATIONS.**—Any Council which is preparing a fishery management plan on its own initiative shall request the Secretary to provide and the Secretary when requesting any Council to prepare any such plan shall provide, to the Council such information as may be appropriate with respect to those international fisheries agreements and any other pertinent information relating to foreign fishing which apply, or may apply, within the fisheries zone and in waters seaward of such zone with respect to the fishery covered by the plan.

(3) **SPECIFIC PLAN REQUIREMENTS.**—Any fishery management plan prepared by any Council may—

(A) designate zones where, and designate periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified vessels or with specified gear;

(B) establish a system under which access to the fishery shall be limited in order to achieve optimum sustainable yield on a basis which may recognize, among other considerations, present participation in the fishery or fisheries, historical fishing practices and dependence on the fishery, value of existing investments in vessels and gear, capability of existing vessels to engage in other fisheries, history of compliance with

fisheries regulations imposed pursuant to this Act, and the cultural and social framework in which the fishery is conducted;

(C) establish limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass, and other factors necessary to carry out the policy and purposes of this Act, including the size or number or nature of the vessels or gear used in such catch;

(D) prohibit, limit, condition, or require the use of specified types of fishing gear, vessels, or equipment for such vessels, including devices which may be required solely or partially to facilitate enforcement of the provisions of this Act;

(E) specify those licenses, permits, or fees (the amount of which may vary between domestic and foreign fishermen, between different categories of domestic fishermen, or between different categories of foreign fishermen) which should be required as a condition to engaging in any fishery or other activity regulated pursuant to this Act;

(F) require the submission to the Secretary of pertinent statistics, including but not limited to information regarding type of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, and number of hauls; and

(G) prescribe such other limitations or requirements as the Council deems necessary and appropriate to carry out the purposes of this Act.

(4) **CONFIDENTIALITY OF STATISTICS.**—Statistics which are required to be submitted to the Secretary by persons pursuant to paragraph (3)(F) shall be confidential (except when required under court order) and the Secretary shall by regulation prescribe such procedures as may be necessary to preserve such confidentiality. Such statistics may be released or made public in any aggregate or summary form which does not directly or indirectly disclose the identity or business of such persons.

(5) **PROPOSED REGULATIONS.**—Any Council may prepare such proposed regulations as it deems necessary and appropriate to carry out any fishery management plan prepared by it and the Secretary shall take such regulations into account when developing proposed regulations to be promulgated pursuant to section 307.

SEC. 305. REVIEW, ADOPTION, OR OTHER ACTION BY SECRETARY REGARDING FISHERY MANAGEMENT PLANS.

(a) **ACTION BY SECRETARY AFTER RECEIPT OF PLAN.**—Upon receipt of any fishery management plan prepared by any Council, the Secretary, within 60 days after the date on which the plan is received, shall—

(1) review the plan as provided for in subsection (c);

(2) notify in writing the Council of his approval, partial approval, or disapproval of the plan; and

(3) in the case of partial approval or disapproval of the plan, include with such notification his objections thereto and the reasons therefor, and request the Council to amend the plan within 45 days.

(b) **AMENDED PLAN.**—Within 30 days after receiving an amended fishery management plan requested by him pursuant to subsection (a)(3), the Secretary shall notify in writing the Council of his approval or disapproval and, in the case of disapproval, his reasons therefor.

(c) **REVIEW OF PLANS.**—The Secretary shall review any fishery management plan submitted to him by any Council. In carrying out such review, the Secretary shall—

(1) consider existing and projected population levels of the fish involved;

(2) evaluate the need for, and the extent to which, the plan will contribute to the conservation and management of such fish;

(3) consider existing fishery management programs, statistics, and data relating to such fish;

(4) if the plan will apply to foreign fishing vessels beyond the fisheries zone, consult with the Secretary of State;

(5) examine and evaluate the management procedures proposed in the plan in order to determine if the regulation of the fishery concerned in the fisheries zone will be consistent on an interstate basis and consistent with the management procedures which are in effect in the territorial sea of the United States;

(6) if the plan or proposed regulations involve methods and procedures for enforcement at sea, consult with the Secretary of the department in which the Coast Guard is operating;

(7) consult with other Federal agencies, the commercial and recreational fishing industries, and, to the extent practicable, any other person having an interest in the conservation of the fish involved and in the enhancement of the marine fisheries of the United States;

(8) analyze the proposed plan in order to determine whether it is consistent with the national fisheries management standards set forth in section 302(c); and

(9) consider such other relevant factors as he deems necessary and appropriate to carry out the purposes of this Act.

(d) **PREPARATION OF PLANS BY SECRETARY.**—If any Council which is requested by the Secretary to prepare a fishery management plan fails to do so within such reasonable time as shall be specified by the Secretary, or if the Secretary disapproves an amended plan under subsection (b) and he determines that such a plan is needed, then the Secretary shall prepare a fishery management plan for the fishery concerned. The fishery management plan requirements set forth in section 304(b) apply with respect to any plan prepared by the Secretary.

SEC. 306. LICENSE FEES.

(a) **DEFINITION.**—As used in this section, the term "license fee" means any fee which is imposed on any person under any fishery management plan implemented under this Act for the privilege of fishing.

(b) **COLLECTION BY SECRETARY.**—All license fees imposed under any fishery management plan implemented under this Act shall be collected by the Secretary.

(c) **CREDIT OF LICENSE FEES TO SEPARATE TREASURY ACCOUNT.**—

(1) **ESTABLISHMENT OF ACCOUNT.**—There is established in the Treasury of the United States a separate account into which all license fees collected by the Secretary shall be credited.

(2) **FEES COLLECTED FROM FOREIGN FISHERMEN.**—Ten percent of all of the license fees collected by the Secretary pursuant to any fisheries management plan from foreign fishermen shall be credited to the account established in paragraph (1) of this subsection and shall remain available without fiscal year limitation to carry out the purposes of subsection (d).

(3) **OTHER FEES.**—All license fees collected by the Secretary pursuant to any fishery management plan (other than the license fees referred to in paragraph (2) of this subsection) shall be credited to the account established in paragraph (1) of this subsection and shall remain available to carry out the purposes of subsection (e).

(d) **REIMBURSEMENT OF CERTAIN FOREIGN FEES IMPOSED ON UNITED STATES FISHERMEN.**—

(1) **FEES ELIGIBLE FOR REIMBURSEMENT.**—The Secretary, under such regulations as he shall prescribe, shall reimburse any owner or operator of a United States fishing vessel for all or part of any license or permit fee which is imposed on such owner or operator by any foreign nation for the privilege of fishing in waters under the jurisdiction of that nation if—

(A) the United States recognizes the jurisdiction of that nation over fisheries conservation and management in such waters; and

(B) United States vessels have fished or carried out fishing-support activities in such waters.

(2) **LIMITATION ON REIMBURSEMENT.**—The Secretary shall reimburse any owner or operator of a United States fishing vessel under paragraph (1) of this subsection for the amount by which the license or permit fee imposed by the foreign nation exceeds the average license fee imposed under all fishery management plans implemented under this Act. Such average license fee shall be computed on the basis of all such license fees in effect at the time such foreign fee was imposed.

(3) **REIMBURSEMENT FUNDING.**—Reimbursement by the Secretary under paragraph (1) of this subsection shall be made first out of the fees credited pursuant to subsection (c)(2), and thereafter out of funds which are hereby authorized to be appropriated to carry out the purposes of this subsection.

(e) **FISHERY RESEARCH AND DEVELOPMENT.**—All license fees collected under any fishery management plan and credited pursuant to subsection (c)(3) shall be used by the Secretary to carry out stock assessment and such other research and development which the Secretary deems appropriate with respect to the fishery resources within the geographical area of responsibility of the Council concerned.

SEC. 307. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

(a) **IN GENERAL.**—After the Secretary has approved any fishery management plan prepared by any Council or prepared by him, the Secretary shall, as soon as practical thereafter publish in the Federal Register the plan and all regulations which he proposed to promulgate in order to implement the plan. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit written data, views, or comments on the proposed regulations. Except as provided in subsection (b), the Secretary may, after the expiration of such period and after consideration of all relevant matters presented, promulgate the regulations with such modifications, if any, as he deems appropriate.

(b) **OBJECTIONS TO PROPOSED REGULATIONS.**—On or before the last day of a period fixed for the submission of written data, views, or comments under subsection (a), any citizen (which for purposes of this section means any individual, corporation, partnership, or other legal entity domiciled in any State) who, or any State which, may be adversely affected by the plan or the proposed regulations may file with the Secretary written objections to specific provisions of the plan or the proposed regulations, stating the grounds therefor, and may request a public hearing on such objections. If the Secretary determines that the citizen filing objections may be adversely affected and such citizen has requested a hearing, or if a State requests a hearing, the Secretary shall not promulgate the regulations except as provided for by subsection (c).

(c) **HEARINGS AFTER OBJECTIONS.**—As soon as practicable after the period of filing objections has expired, if the Secretary determines that any citizen of the United States filing objections may be adversely affected and such citizen has requested a hearing, or if a State requests a hearing, the Secretary shall publish in the Federal Register a notice specifying the time and place at which a public hearing shall be held, the provisions of the proposed regulations to which such objections have been filed, and such other provisions as he may designate for consideration. The Secretary thereafter shall hold a public hearing in accordance with section 553 of title 5, United States Code, for the purpose of receiving information relevant to the matters identified in the notice of hearing. If two or more citizens of the United States or States request hearings within the prescribed period and the Secretary deems such hearing appropriate, the Secretary may consolidate such hearings in the interest of time and economy. At the hearing any interested citizen or State may be heard. As soon as practicable after the completion of the hearing, the Secretary shall act upon such objections, make his determinations public (including a statement of his reasons therefor), and promulgate the regulations with such modifications, if any, as he deems appropriate.

(d) **REVISION OF REGULATIONS.**—The Secretary may from time to time revise any regulation promulgated pursuant to this section in accordance with the procedures prescribed in subsections (a) through (c).

(e) **EMERGENCY REGULATIONS.**—Notwithstanding subsections (a), (b), and (c), the Secretary may waive, if the Council concerned consents, by the affirmative vote of not less than two-thirds of the membership of the Council, to such waiver, the requirements for notice and public hearing set forth in such subsections with respect to any regulation implementing any fishery management plan if he finds (and incorporates the finding and a brief statement of the reasons therefor in the publication of the regulation) that, due to an emergency situation arising with respect to the fishery concerned, notice and hearing thereon are impracticable, unnecessary, or contrary to the public interest. Written objections to such procedure may be submitted within 30 days after the effective date of any such emergency regulation. If any such written objection is so received, the Secretary shall, not later than 40 days after such effective date, initiate the procedures set forth in subsections (a), (b), and (c). Any emergency regulation promulgated pursuant to this subsection shall remain in effect for one year after the date on which the Secretary publishes notice of proposed rulemaking required by subsection (a), unless the Secretary terminates such regulation by notice in the Federal Register at any earlier date.

SEC. 308. TEMPORARY EMERGENCY FISHERY MANAGEMENT PLANS PREPARED AND IMPLEMENTED BY THE SECRETARY WITH RESPECT TO CERTAIN FISHERIES.

(a) **IN GENERAL.**—Before the close of the 90-day period beginning on the date of the enactment of this Act, and without regard to sections 304 through 307 except as provided in subsection (d) of this section, the Secretary, on his own initiative or upon the request of any State, shall with respect to any coastal species or Continental Shelf species which he believes to be, as of the date of the

enactment of this Act, (1) depleted, (2) in imminent danger of becoming depleted, or (3) under intensive use but unregulated because of the absence of management authority—

(A) prepare, after consultation with appropriate States and fishing industry representatives, a management plan, which shall apply within those waters which comprise the contiguous fisheries zone established by the first section of the Act of October 14, 1966, for the fishery; and

(B) promulgate such regulations as may be necessary and appropriate to implement such plan.

(b) **INTERIM REPORT.**—Before the close of the 45-day period beginning on the date of the enactment of this Act, the Secretary shall submit to the Congress a report which sets forth those fisheries which he will take action on pursuant to subsection (a).

(c) **PLAN REQUIREMENTS.**—The Secretary, in preparing any plan required by subsection (a), shall include such requirements set forth in section 304(b)(3) as he deems to be necessary and appropriate with respect to the fishery concerned, but may not, pursuant to such plan, impose limited entry or license fees on vessels documented under the laws of the United States or otherwise registered under the laws of any State in any area of the waters comprising such contiguous fisheries zone.

(d) **TREATMENT OF REGULATIONS.**—Any regulation which is promulgated by the Secretary to implement any fishery management plan prepared pursuant to this section shall be treated as an emergency regulation promulgated under section 307(e) except that any such regulation shall remain in effect for 180 days after the date on which the regulation is promulgated unless the Secretary terminates such regulation at an earlier date.

SEC. 309. STATE JURISDICTION.

(a) **IN GENERAL.**—Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction of any State seaward of the coastline of the United States.

(b) **ASSERTION OF FEDERAL JURISDICTION IN CERTAIN INSTANCES.**—

(1) **FINDINGS.**—The Congress finds that anadromous species, certain coastal species, and certain Continental Shelf species move, during their life cycles, within waters over which more than one State has jurisdiction, and move from such waters to waters that are not within the jurisdiction of any State. The Congress further finds that, although the purpose of this Act is not to affect State jurisdiction over fish principally within waters under State jurisdiction, there may be instances where Federal regulation within such waters of any anadromous species, coastal species, or Continental Shelf species may be necessary in order to insure the effectiveness of a management plan implemented under this Act for a fishery.

(2) **FINDINGS AND ACTION BY SECRETARY.**—If the Secretary finds, after notice and opportunity for agency hearing, that—

(A) any fishery management plan implemented pursuant to this Act applies to any anadromous species, coastal species, or any Continental Shelf species which are to any extent, or are at any time, under the jurisdiction of any State; and

(B) such State has taken any action, or omitted to take any action, the result of which will substantially and adversely affect the carrying out of the management plan which applies to a fishery, the Secretary shall promptly declare that such fishery within waters, other than internal waters, under jurisdiction of the State shall be subject to regulation by him pursuant to the management plan, and the Secretary, as soon as practicable thereafter, shall assume responsibility for such regulation.

(c) **RESUMPTION OF STATE REGULATION.**—If the Secretary, pursuant to subsection (b), assumes responsibility for the regulation of any fishery within waters under the jurisdiction of any State, the State may at any time thereafter apply to the Secretary for reinstatement of State regulation of such fishery. If the Secretary finds, after notice and opportunity for agency hearing, that the reasons for which regulation of the fishery by him was assumed no longer prevail, the Secretary shall promptly declare such fishery to be subject to regulation by the State within that State's waters pursuant to the fishery management plan.

SEC. 310. PROHIBITED ACTS.

It is unlawful for any person—

- (1) to violate any provision of this Act or any regulation promulgated under this Act to carry out any fishery management plan implemented pursuant to this Act;
- (2) if fishing pursuant to a permit issued under section 201(g), to violate any condition or restriction accepted by the foreign nation concerned pursuant to that section in regard to the permit;
- (3) to refuse to permit any authorized representative of the Secretary, or of the Secretary of the Department in which the Coast Guard is operating, to board any fishing vessel under the control of such person if the purpose of the requested boarding is to carry out any inspection relating to the enforcement of this Act, any regulation referred to in paragraph (1), or any condition or restriction referred to in paragraph (2);
- (4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized representative of the Secretary, or of the Secretary of the Department in which the Coast Guard is operating, who is engaged in any reasonable inspection of a kind referred to in paragraph (3); or
- (5) to ship, transport, purchase, offer for sale, import, export, or have in custody, possession, or control any fish taken in violation of this Act any regulation referred to in paragraph (1), or any condition or restriction referred to in paragraph (2).

SEC. 311. CIVIL PENALTIES.

(a) **ASSESSMENT OF PENALTY.**—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by paragraph (1), (2), or (5) of section 310 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) **REVIEW OF CIVIL PENALTY.**—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings of the Secretary shall be set aside if found to be unsupported by substantial evidence as provided by section 706(2) of title 5, United States Code.

(c) **ACTION UPON FAILURE TO PAY ASSESSMENT.**—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) **COMPROMISE OR OTHER ACTION BY SECRETARY.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

SEC. 312. CRIMINAL PENALTIES.

Any person who commits any act prohibited by paragraph (3) or (4) of section 310 shall be fined not more than \$50,000; except that if such person uses a deadly or dangerous weapon in the commission of any such act, such person shall be fined not more than \$100,000, or imprisoned for not more than 10 years, or both.

SEC. 313. FORFEITURE.

(a) **APPLICATION FOR FORFEITURE.**—Any district court of the United States shall have jurisdiction, upon application by the Secretary or the Attorney General, to order forfeited to the United States any fishing vessel, catch, cargo, fishing gear, or the monetary value thereof as determined by the court, used, intended for use, or acquired in the commission by any person of any act prohibited by section 310.

In any such proceeding, such court may at any time enter such restraining orders or prohibitions or take such other actions as are in the interest of justice, including the acceptance of satisfactory performance bonds in connection with any property subject to forfeiture.

(b) **SEIZURE.**—If a judgment is entered under this section for the United States, the Attorney General is authorized to seize all property or other interest declared forfeited upon such terms and conditions as are in the interest of justice. All provisions of law with respect to violations of the customs laws relating to the disposition of forfeited property, the proceeds from the sale of such property, the remission or mitigation of forfeitures and the compromise of claims and the award of compensation to informants with respect to forfeitures, shall apply to forfeitures incurred, or alleged to have been incurred, under this section, insofar as applicable and not inconsistent with the provisions of this section. Such duties as are imposed upon the collector of customs or any other person with respect to seizure, forfeiture, or disposition of property under the customs laws shall be performed with respect to property used, intended for use, or acquired in the commission of any act prohibited by section 310 by such officers or other persons as may be designated for that purpose by the Secretary.

SEC. 314. ENFORCEMENT.

(a) **IN GENERAL.**—The provisions of this Act and any regulation promulgated under this Act to carry out any fishery management plan implemented under this Act shall be enforced by the Secretary, and the Secretary of the Department in which the Coast Guard is operating. In carrying out such enforcement, the Secretary and the Secretary of the Department in which the Coast Guard is operating may utilize by agreement, with or without reimbursement, the personnel, services, and facilities—

(1) of any other Federal agency; or

(2) of any State agency, but only for purposes of enforcement with respect to (A) any vessel in the fisheries conservation and management zone, or (B) any vessel documented under the laws of the United States or otherwise registered under the laws of any State, wherever any such vessel may be found.

(b) **AUTHORITY.**—Any individual authorized pursuant to subsection (a) to enforce the provisions of this Act, any regulation issued thereunder, and any condition or restriction applicable to any permit issued under section 201 may—

(1) with or without a warrant or other process, board and inspect any fishing vessel documented under the laws of the United States or otherwise registered under the laws of any State or any other fishing vessel subject to the jurisdiction of the United States, and its catch and gear, upon the waters of the fisheries conservation and management zone or upon all high seas seaward of such zone;

(2) with or without a warrant or other process, arrest any person committing in his presence or view a violation of section 310 (3) or (4);

(3) execute any warrant or other process issued by any officer or court of competent jurisdiction;

(4) seize any fishing vessel and fishing gear used in, and any fishing vessel on which occurs, the violation of any provision of this Act, any regulation promulgated to carry out any management plan implemented pursuant to this Act, or any condition or restriction applicable to any permit issued under section 201; and

(5) seize any fish, wherever found, taken in violation of any provision of this Act or any regulation or condition or restriction referred to in paragraph (4) of this subsection.

Any fishing vessel, fishing gear, or fish seized pursuant to paragraph (4) or (5) of this subsection may be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in such manner as may be prescribed by the Secretary by regulation.

(c) **STATE OFFICERS.**—Any officer of any State, if designated pursuant to subsection (a) to function as a Federal law enforcement agent shall not be considered to be a Federal employee of the United States for the purposes of any laws administered by the Civil Service Commission.

(d) **JURISDICTION OF COURTS.**—The Federal district courts shall have exclusive jurisdiction over all cases arising under this Act, any regulation promulgated under the Act to carry out any fishery management plan implemented under this Act and any permit issued pursuant to section 201, and may issue all warrants or other processes as may be necessary. In the case of Guam, actions arising under

such regulations may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa, such actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions.

(e) **PROCEDURE.**—Notwithstanding the provisions of section 2464 of title 28, United States Code, when a warrant of arrest or other process in rem is issued in any cause under this section, the marshal or other officer shall stay the execution of such process, or discharge any fish seized if the process has been levied, on receiving from the respondent or claimant of the fish a bond or other surety satisfactory to the court, conditioned to deliver the fish seized, if condemned, without impairment in value or, in the discretion of the court, to pay its equivalent value in money or otherwise to answer the decree of the court in such case. Such bond or other surety shall be returned to the court and judgment thereon against both the principal and sureties may be recovered in the event of any breach of the conditions thereof as determined by the court. In the discretion of the accused, and subject to the direction of the court, the fish may be sold for not less than its reasonable market value and the proceeds of such sale placed in the registry of the court pending judgment in the case.

TITLE IV—AMENDMENTS TO OTHER LAWS RELATING TO THE FISHERIES AND MISCELLANEOUS PROVISIONS

SEC. 401. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) **SEIZURE PROVISION.**—Section 2 of the Fishermen's Protective Act of 1967 (22 U.S.C. 1972) is amended to read as follows:

"Sec. 2. In any case where—

"(1) any vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; or

"(2) any vessel of the United States is seized by a foreign country while such vessel is engaged in fishing in any area of the high seas (and the rights or claims to fisheries conservation and management jurisdiction in such area by such country are recognized by the United States) for a specific stock of fish (including, but not limited to, tuna and any other highly migratory species of fish), and vessels of the United States have previously fished in such area for such stock,

and there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall as soon as practicable take action to attend to the welfare of such vessel and its crew while it is held by such country to secure the release of such vessel and crew, and to immediately ascertain the amount of any fine, license, fee, registration fee, or any other direct charge which may be reimbursable under section 3(a) of this Act."

(b) **REIMBURSEMENT PROVISION.**—

(1) Section 3(a) of such Act of 1967 (22 U.S.C. 1973(a)) is amended by inserting immediately before the last sentence thereof the following new sentence: "For purposes of this section, the term 'other direct charge' means any levy, however characterized or computed (including, but not limited to, computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee."

(2) The amendment made by paragraph (1) of this subsection shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 402. AMENDMENTS TO THE ACT OF MAY 20, 1964.

(a) **AMENDMENTS.**—The Act of May 20, 1964 (78 Stat. 194-196; 16 U.S.C. 1081-1086) is amended—

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

"That (a) it is unlawful for any vessel, except a vessel of the United States, or for any master or other person in charge of such a vessel, to engage in fishing—

"(1) within the territorial waters of the United States, its territories and possessions, and the Commonwealth of Puerto Rico;

"(2) within the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975 unless such fishing is authorized under a permit issued pursuant to section 201 of such Act;

"(3) for any anadromous species beyond such fisheries conservation and management zone for which a fishery management plan has been implemented under title III of such Act of 1975 unless such fishing is authorized under a permit issued pursuant to section 201 of such Act of 1975; and

"(4) for any Continental Shelf fishery resource.

"(b) Notwithstanding any other provision of law, the Secretary of Commerce, with the concurrence of the Secretary of State, may permit a vessel, other than a vessel of the United States, owned or operated by an international organization of which the United States is a member, to engage in fishery research within the territorial waters of the United States or within the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975 or for Continental Shelf fisheries resources and to land its catch in a port of the United States in accordance with such conditions as the Secretary may prescribe whenever they determine such action is in the national interest;" and

(2) by amending section 5(c) by striking out "fisheries" and inserting in lieu thereof "fishing".

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect July 1, 1976.

SEC. 403. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) **AMENDMENT.**—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (Public Law 94-70) is amended by striking out "the entire zone established by the United States under the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)," and inserting in lieu thereof "the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect July 1, 1976.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) **AMENDMENT.**—Section 3 (15)(B) of the Marine Mammal Protection Act of 1972 (86 Stat. 1029; 16 U.S.C. 1362(15)(B)) is amended by striking out "the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094)," and inserting in lieu thereof "the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975."

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect July 1, 1976.

SEC. 405. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act (other than section 306(d)(3)).

SEC. 406. SEVERABILITY.

The provisions of this Act shall be severable and if any part of the Act is declared unconstitutional or the applicability thereof is held invalid, the constitutionality of the remainder and the applicability thereof shall not be affected thereby.

Amend the title so as to read: "A bill to provide for the conservation and management of the fisheries, and for other purposes."

PURPOSE OF THE LEGISLATION

The purpose of this legislation is to provide for the protection, conservation, and enhancement of the fisheries resources of the United States.

In accomplishing this purpose, the legislation would extend the exclusive fisheries zone of the United States from 12 to 200 miles effective July 1, 1976. In addition, it would provide for the development of regional fisheries management plans and regulations that would govern fishing within the fisheries zone and control over anadromous fish to the extent of their range.

LEGISLATIVE BACKGROUND

H.R. 200 was introduced January 14, 1975, by Mr. Studds and 24 other Members of the House. In addition, there were 13 identical bills and 4 similar bills introduced by various Members of the House.

The authors of these bills are as follows:

Mr. Adams	Mr. Esch	Mr. Murtha
Mr. Addabbo	Mr. Fish	Mr. Nedzi
Mr. Alexander	Mr. Florio	Mr. O'Brien
Mr. Ambro	Mr. Foley	Mr. O'Hara
Mr. Annunzio	Mr. Wm. Ford of Michigan	Mr. O'Neill
Mr. Ashley	Mr. Forsythe	Mr. Ottinger
Mr. Aspin	Mr. Gaydos	Mr. Patten
Mr. AuCoin	Mr. Giaimo	Mr. Pattison
Mr. Badilo	Mr. Ginn	Mr. Pike
Mr. Bafalis	Mr. Harkin	Mr. Pritchard
Mr. Bauman	Mr. Harrington	Mr. Rangel
Mr. Beard	Mrs. Heckler	Mr. Riegle
Mr. Bell	Mr. Helstoski	Mr. Rinaldo
Mr. Biaggi	Mr. Henderson	Mr. Rodino
Mr. Boland	Mr. Hicks	Mr. Roncalio
Mr. Bolling	Mr. Holland	Mr. Rooney
Mr. Bonker	Mrs. Holt	Mr. Rose
Mr. Bowen	Mr. Horton	Mr. Ryan
Mr. Burke	Mr. Hughes	Mr. St Germain
Mr. Byron	Mr. Ichord	Mr. Sarasin
Mr. Carr	Mr. Jeffords	Mr. Sarbanes
Mr. Carter	Mr. Jenrette	Mrs. Schroeder
Mrs. Chisholm	Mr. W. B. Jones of North Carolina	Mr. Sikes
Mr. Don H. Clausen	Mr. Lagomarsino	Mr. Snyder
Mr. Del Clawson	Mr. Lehman	Mr. Solarz
Mr. Cleveland	Mr. Lent	Mrs. Spellman
Mr. Cohen	Mr. Long	Mr. Stanton
Mr. Conte	Mr. Lott	Mr. Stark
Mr. Cotter	Mr. McCormack	Mr. Studds
Mr. Coughlin	Mr. McKinney	Mr. Talcott
Mr. D'Amours	Mr. Macdonald	Mr. Thompson
Mr. Dan Daniels of Virginia	Mr. Mathis	Mr. Tsongas
Mr. D. Daniels of New Jersey	Mr. Meeds	Mr. Vander Veen
Mr. Davis	Mr. Mezvinsky	Mr. Vigorito
Mr. de Lugo	Mr. Miller	Mr. Walsh
Mr. Derwinski	Mr. Minish	Mr. Weaver
Mr. Dodd	Mr. Mitchell of New York	Mr. Whitehurst
Mr. Downey	Mr. Mitchell of Maryland	Mr. C. Wilson of Texas
Mr. Downing of Virginia	Mr. Moakley	Mr. C. Wilson of California
Mr. Drinan	Mr. Moffett	Mr. Won Pat
Mr. Duncan	Mr. Montgomery	Mr. Yates
Mr. Early	Mr. Murphy of New York	Mr. Yatron
Mr. Edgar		Mr. Young of Alaska
Mr. Eilberg		Mr. Zeferetti
Mr. Emery		

Bills on the same subject were introduced by Mrs. Sullivan, Mr. Dingell, and Mr. Rogers.

As introduced, H.R. 200 had as its main purpose to extend the exclusive fisheries zone of the United States from 12 to 200 miles as an interim measure. Whenever general agreement on fisheries jurisdiction was reached in the United Nations Conference on the Law of the Sea and such agreement came into force and effect for the United States, the interim measure would cease to apply, after which the provisions of the treaty would apply.

Hearings were held on the legislation by the Subcommittee on Fisheries and Wildlife Conservation and the Environment on March 10, 11, 12, 13, 14, 18, 19, 20, and 27, 1975. In addition, 10 days of field hearings were held on identical and similar legislation in the 93d Congress as follows; Portland, Maine; Islip, N.Y.; Toms River, N.J.; Hampton, Va.; Biloxi, Miss.; New Orleans, La.; New Bedford, Mass.; Panama City, Fla.; Corpus Christi, Tex.; and San Pedro, Calif.

The Departments of Commerce, State, Interior, Justice, Treasury, Defense, and Transportation were requested by the Committee to comment on the legislation. These requests were referred to the Department of State for the preparation of coordinated Executive Branch comments by the National Security Council Interagency Task Force on the Law of the Sea. The task force report said: "... we are sympathetic to the need for a resolution to the genuine problems which have prompted these bills; however, in our view the best solution can be attained by multilateral agreement in the Third United Nations Conference on the Law of the Sea..." The first two substantive sessions of this Conference were held in Caracas from June 20 to August 29, 1974, and in Geneva from March 17 to May 10, 1975. A third session is scheduled for New York City beginning March, 1976.

The major objections set forth in the task force report were:

1. Unilateral action now could seriously undermine U.S. efforts in the Law of the Sea Conference and hamper chances for a satisfactory multilateral settlement of the fisheries question.

2. Such unilateral action runs counter to established fundamental principles of international law and would encourage similar jurisdictional claims by other countries, thereby prejudicing U.S. distant water fishing interests such as tuna and shrimp.

3. Serious foreign policy and enforcement problems would result if other distant-water fishing nations refused to recognize our unilateral claims.

4. The bill lacks certain provisions contained in the U.S. proposal for a 200-mile economic zone at the Law of the Sea Conference, which are necessary to protect the interests of all States and the international community in general. These include consideration of the diverse interests of the international community, compulsory dispute settlement, and the payment of reasonable fees to defray regulatory costs.

The overwhelming majority of the testimony presented at the hearings was in strong support of the legislation. In general, the coastal fishermen supported the legislation while the off-shore fishermen, such as the tuna and shrimp fishermen, opposed it. The main basis of the opposition was their fear that unilateral action on the part of the United States would trigger further unilateral action on the part of certain foreign nations off whose shores they fish, preventing their continued fishing in such waters, and causing the demise of their industries.

After giving careful consideration to the evidence presented at the hearings and the report of the National Security Council Interagency Task Force on the Law of the Sea, the committee virtually unanimously ordered reported H.R. 200, with amendments, a quorum being present. The vote was 36 for, 3 against, and 1 present.

As ordered reported, H.R. 200 includes many of the amendments suggested for adoption by witnesses testifying at the hearings and meets many of the objections expressed in the task force report. In fact, it parallels the U.S. position on this issue at the Law of the Sea Conference in many respects. The committee made every effort to see that all segments of the U.S. fishing industry were protected, including those fishermen who fish off the coasts of other nations. The major provisions of the legislation include: an extension of the United States exclusive fishery zone from 12 to 200 miles effective July 1, 1976; a comprehensive management program governing U.S. fishermen and foreign fishermen within the zone; the regulation of all species of fish except highly migratory species (tuna, bill fishes, etc.) which are to be regulated by International fishery agreements; the creation of seven regional marine councils to assist the Secretary of Commerce in developing regional management plans and regulations; authorization for the charging of reasonable Federal license fees for all those fishing within the zone (including American fishermen) for managed species, the proceeds of which would be earmarked for stock assessment and research except that a portion of such fees imposed on foreign fishermen could be used to reimburse U.S. fishermen for license fees imposed on them for fishing off the coast of foreign nations. Priority or preferential rights for U.S. fishermen within the zone, with excess stocks to be shared with foreign nations licensed by the Federal Government; submission to Congress, for possible disapproval within 60 days of signing, of all bilateral fishing agreements with foreign nations permitting fishing within the 200 mile zone or for anadromous fish beyond the zone if subject to a management plan; the banning of seafood imports from foreign nations which refuse to grant equitable access, consistent with reasonable management and conservation practices, to United States fishermen with respect to waters which they have previously fished; and the imposition of penalties against all violators of the act and the regulations issued pursuant thereto.

BACKGROUND AND NEED FOR THE LEGISLATION

I. HISTORY OF FISHERIES JURISDICTION AND MANAGEMENT

A. *International Law*

For well over 300 years, one of the most basic principles of the freedom of the seas has been the freedom of fishing. That is, States have generally claimed and been accorded relatively narrow limits of jurisdiction and fishermen have had free and open access to all stocks on the high seas (those waters outside territorial waters of coastal nations). In these international waters, no single State or group of States has had a right to exclude others from freely exploiting these common property resources.

Until recently, this traditional rule of law created a workable arrangement for harvesting the fish resources of the ocean. However, in the last 15 years, as fishery technology has become extremely sophisticated and as fishermen have learned that the resources of the sea are not inexhaustible, continued viability of this rule has come into question. In the history of the law of the sea, specific multilateral or bilateral international agreements for the conservation of fisheries are

relatively recent and are in response to the inability of the traditional rule of freedom of fishing to conserve fish and settle controversies between nations.

International lawyers view the law of the oceans as a process of "continuous interaction; of continuous demand and response", a developing system whereby unilateral claims are put forward; the world community weighs the claims and then such claims are either accepted or rejected. International law can thus evolve, too, through the treaty-making process, either through general international agreement on a particular issue or through accumulation of bilateral agreements reflecting a general legal trend. Since 1940 the process has been quite active and a myriad of bilateral or regional arrangements seeking to control fisheries have been negotiated. From time to time, however, some nations have acted unilaterally with respect to altering some aspect of existing, conventional international practice or law—and fishing jurisdictions are a good example.

It was actually the United States which first touched off the most recent series of unilateral declarations of fisheries jurisdiction beyond the territorial sea. President Harry S. Truman in his "Presidential Proclamation With Respect To Coastal Fisheries In Certain Areas Of The High Seas," delivered September 28, 1945, set the stage as follows:

In view of the pressing need for conservation and protection of fisheries resources, the Government of the United States of America regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coast of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale . . . and all fishing activities in such zones shall be subject to regulation and control . . . The right of any State to establish conservation zones off its shores . . . is conceded . . . The character as high seas of areas where such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected . . .

The motivating purpose behind President Truman's proclamation was conservation and arose out of the incursion of Japanese fishermen into the Alaska Bristol Bay Red Salmon fishery. Shortly following, Chile declared its jurisdiction over the seas adjacent to its coast out to a distance of 200 miles and predicated its decision on the Truman Fisheries Proclamation.

However, the Truman fisheries proclamation was never actually implemented into law and, according to the *Digest of International Law*, the proclamation *per se* asserts no claim to exclusive fisheries jurisdiction over high seas fishing areas off the coast of the United States. Instead, it is stated, the purpose of the fisheries proclamation was to establish, as United States policy, that where fishing activities were developed or maintained jointly by the United States and other nations, conservation zones would be established—but only pursuant to agreement between the United States and such other nations. The domestic implementation of this proclamation has been mainly through attempts by the State Department to negotiate international agreements to protect certain species of fish, most notably the salmon which were threatened by the Japanese.

The Truman proclamation was a forerunner of the 1958 International Convention on Fishing and Conservation of the Living Resources of the High Seas. Currently, there are nearly two score bilateral and multilateral treaties and other international agreements on fisheries to which the United States is a party.¹

Since the 1945 Truman proclamation, nearly forty nations have declared exclusive fisheries zones beyond 12 nautical miles. See table 1.

TABLE 1
NATIONS WHICH HAVE UNILATERALLY EXTENDED THEIR EXCLUSIVE FISHERY JURISDICTION BEYOND 12 NAUTICAL MILES¹

Country	Exclusive fishing jurisdiction (nautical miles)	Notes
Argentina.....	200	
Bangladesh.....	200	
Brazil.....	200	
Cameroon.....	18	
Chile.....	200	
Congo.....	3-15	15 unconfirmed.
Costa Rica.....		"Specialized competence" over living resources to 100 miles.
Ecuador.....	200	
El Salvador.....	200	
Gabon.....	100	
Gambia.....	150	Unconfirmed. Some apparent confusion in drafting of Act No. 9, 1969.
Ghana.....	30	
Guinea.....	130	
Haiti.....	15	Congressional Decree 25 of Jan. 17, 1951, set a 200-nautical-mile territorial sea. Article 5 of the Honduran Constitution accepts a 12-nautical mile limit, but the earlier 200-nautical-mile limit is still on the books.
Iceland.....	50	Limited in Persian Gulf to continental shelf boundaries.
Iran.....	50	Archipelago principle.
Korea, Republic of.....	50	
Madagascar.....	100	Maximum 150, letter to FAO, May 11, 1969.
Maldives.....	30	
Mauritania.....	70	Except for Strait of Gibraltar.
Morocco.....	200	
Nicaragua.....	30	
Nigeria.....	50	
Oman.....	50	
Pakistan.....	200	
Panama.....	200	
Peru.....		Archipelago principle.
Philippines.....	122	
Senegal.....	200	
Sierra Leone.....	200	
Somalia.....	50	
Tanzania.....		Do.
Tonga.....	12	Exclusive fisheries zone follows the 50 meter isobath for part of coast (maximum 65 miles).
Tunisia.....		
Uruguay.....	200	
Vietnam, North.....	20	
Vietnam, Republic of.....	53	

¹Source: Limits in the Seas No. 37, National Claims to Maritime Jurisdiction (revised), The Geographer, Office of the Geographer, Bureau of Intelligence and Research, U.S. Department of State, Apr. 1, 1974.

²Approximate.

³Kilometers.

This increasing tendency of nations to act unilaterally lends support for 12 miles for territorial waters and for fisheries jurisdictional claims out to 200 nautical miles.

Although it is not altogether clear, some legal experts claim that fisheries jurisdiction is still, as a matter of law, set at the 12-mile limit. (An insufficient number of States, they claim, have as yet to adopt a 200-mile fishery zone.) In any event, the world community is once again attempting to resolve the question of jurisdiction in the

¹U.S. Congress, Senate, Committee on Commerce, *Treaties and Other International Agreements on Fisheries, Oceanographic Resources, and Wildlife to which the United States is Party*.

Committee Print, Washington, U.S. Government Print. Office, 1974.

oceans, and, of course, the question of fisheries jurisdiction is in the forefront of these new discussions.

B. The United Nations Law of the Sea Conference

In 1958 and 1960 the international community negotiated four separate treaties regarding law of the sea in an attempt to codify uncertain international rules. The principal reason, in fact, for the 1960 meeting was to resolve the issue of limits in the ocean. Again, it was the question of fisheries which proved to be the point on which the nations could not agree. No specific limit on either the limits of the territorial sea or fisheries jurisdiction was achieved. A third Law of the Sea Conference, under consideration since 1967, met in Caracas, Venezuela, from June 20 to August 29, 1974, to consider a large number of issues dealing with the future status of the oceans and their resources. A principal issue among them has been and continues to be the question of the sound future management of the living resources of the sea.

As a matter of policy, for the last several years the United States has been adamantly opposed to any extension of fishery jurisdiction beyond 12 miles. In fact, the Executive Branch of the Government has generally supported the principle of unlimited freedom of the seas as being in the best interest of the Nation. This is attributable to strong naval interests, the need to import large amounts of energy and raw materials by water, and distant water fishing interests, notably tuna and shrimp. In general, coastal fishing interests have taken a back seat to global interests. Consequently, the United States proposal at the Law of the Sea Conference for the resolution of the fisheries question, until quite recently, was the so-called "species" approach, designed to assert no geographical fisheries jurisdiction. Under this proposal, coastal nations would be given regulatory jurisdiction over coastal and anadromous species of fish, together with preferential rights to such fish up to the level of their capacity. The actual limit of coastal jurisdiction over these species would be determined by their location, not by any arbitrary geographical line. In those instances where a coastal nation was not harvesting all of the fish that could be taken on the basis of sustainable yield, all nations would be permitted to fish the surplus after payment of an administrative fee. Highly migratory species would be placed under management by an international body.

The United States "species approach" proposal generated little support among the international community. As evidence of this conclusion, on July 11, 1974, in a major speech by Ambassador John R. Stevenson, Special Representative of the President and U.S. Representative to the Law of the Sea Conference, the United States enunciated a new position. In that speech, Mr. Stevenson stated the position as follows:

In the course of listening to and reading the statements made during the last 2 weeks, I have been struck by the very large measure of agreement on the general outlines of an overall settlement. Most delegations that have spoken have endorsed or indicated a willingness to accept, under certain conditions and as part of a package settlement, a maximum limit of 12 miles for the territorial sea and of 200 miles for an economic zone, and an international regime for the deep sea bed in the area beyond national jurisdiction.

The United States has for a number of years indicated its flexibility on the limits of coastal state resource jurisdiction. We have stressed that the content of the legal regime within such coastal state jurisdiction is more important than the limits of such jurisdiction. Accordingly, we are prepared to accept, and indeed we would welcome general agreement on a 12 mile outer limit for the territorial sea and a 200-mile outer limit for the economic zone provided that it is part of an acceptable comprehensive package including a satisfactory regime within and beyond the economic zone and provision for unimpeded transit of straits used in international navigation.

Ambassador Stevenson went on to state further that:

For fisheries, to the extent that the coastal nation does not fully utilize a fishery resource, we contemplate coastal nation duty to permit foreign fishing under reasonable coastal state regulations. These regulations would include conservation measures and provisions for harvesting by coastal state vessels up to their capacity and would include the payment of a reasonable license fee by foreign fishermen. We also contemplate a duty for the coastal state and all other fishing states to cooperate with each other in formulating equitable international and regional conservation and allocation regulations for highly migratory species, taking into account the unique migratory pattern of these species within and without the zones.

The thrust of this new position indicated that the United States is indeed ready to accept, as part of an acceptable overall treaty package, the concept of 200 miles for fishery management jurisdiction. However, acceptance would be conditioned upon satisfactory resolution of a number of issues of high importance to the U.S. delegation. In effect, the United States has conceded that the 200 mile limit will eventually be accepted by the Law of the Sea Conference and, consequently, has turned its attention to defining the relationship between the rights of the coastal and the international community within that 200 mile limit.

The delegates to the Caracas meeting, failing to reach any agreement, adjourned and then reconvened the Conference for a second session in Geneva for eight weeks ending May 10, 1975. While no final agreement was achieved there either, a draft treaty or "single negotiating test" was prepared which will be further considered by Conference participants in New York in March of 1976 when the third session of the Law of the Sea Conference is now scheduled to be held. A consensus is evidently emerging among Conference delegates that new international law should recognize an extension of all nations' territorial waters from 3 to 12 miles offshore, with coastal states allowed to establish an "economic zone" of jurisdiction extending at least 200 miles offshore.

In terms of the problems addressed by H.R. 200, this indication of official U.S. acceptance of the principle of a 200-mile economic zone does not nullify the need for this legislation. Primary among the reasons why H.R. 200 is considered necessary by the Committee on Merchant Marine and Fisheries is that the international community does appear ready to adopt a 200-mile limit. The real question is when.

Beginning now, it is quite possible that distant water fishing nations which have made large investments in technologically advanced and large fleets will become very uncertain about future access to a coastal nation's 200-mile zone. Consequently, it is possible that such nations will step up their efforts to capture fish on the high seas as long as the limits remain narrow. The Committee is quite concerned about the effect of delay in the implementation, ratification and effective date of any new convention that may be negotiated in the Law of the Sea Conference which will most likely contain a 200-mile fishery limit provision.

Informed observers of international negotiating sessions in general, and of the Law of the Sea Conference in particular, note there is no absolute assurance of any complete agreement on a new international treaty at the March 1976 meetings. They also point out that even if a new treaty text is agreed to by the Delegates, many months will pass before a sufficient number of nations officially sign the negotiated treaty; formal ratifications by signatory nations will take even longer. In fact, if previous law of the sea treaties are any benchmark, an effective treaty may be several years off. Three of the four conventions signed in 1958 entered into force between 4 and 6 years after signature in Geneva. The fourth, the Convention on Fishing and Conservation of the Living Resources of the High Seas, entered into force only in 1966, fully 8 years after it was signed. In all likelihood the world will be confronted with a substantial interim period between agreement and a final, effective treaty. H.R. 200 is intended to fill that gap by providing the United States with authority to manage the fish it relies upon during this interim period.

C. Federal Jurisdiction

In addition to the Federal role in international affairs, as evidenced by the numerous fisheries protocols, treaties and conventions to which the United States is a party, there is also a sole Federal jurisdiction over the fisheries resources found beyond the three-mile territorial sea and within the present 12-mile limit to our fisheries economic zone. In these waters, it is the Federal Government which has the responsibility for whatever management of the fish stocks occur at all. Historically, however, the Federal role, in effect, has been limited to data gathering and law enforcement (principally against encroaching foreign fishermen). Many, in fact most, of the fish stocks found within the 3- to 12-mile zone also spend part of their life histories within the coastal 3-mile area (and even inland in the case of anadromous species) and/or beyond the 12-mile limit. True management under these circumstances is awkward and inefficient at best and essentially nonexistent at worst.

D. State Jurisdiction

Under United States law, the biological resources within the territorial sea of the United States (i.e., out to 3 miles) are the management responsibility of the adjacent several States of the Union. Whatever regulation, of both fishermen and fish harvest, that occurs in this area is as deemed necessary and appropriate by each concerned State. Notwithstanding that fish are mobile and do not respect political boundaries between States or between the territorial sea and the high sea, effecting integrated regional management has far too often proven elusive or impossible. The Committee has determined clearly

that the critically needed conservation and management of our fish stocks cannot be obtained without improved coordination and integration of the respective State and Federal roles.

II. THE CHARACTER AND VALUE OF THE U.S. COMMERCIAL FISHING INDUSTRY

Commercial fisheries traditionally have been an important source of income and employment in coastal areas of the United States and there are some years in which the various fleets earn high profits. Commercial fishing, however, is generally characterized by marginal or break-even operations. This is not to say that all vessels operating in a given fleet merely break even. There are always some vessels that through special expertise of the captain and/or crew or for some other reason will earn high profits. However, the nature of the resource and the institutional arrangements controlling harvesting are such that there is clearly a tendency for the vessels to be forced to a break-even point of production. This tendency makes it difficult to attract new capital, technology and young fishermen.

Consequently, the U.S. fleet is generally characterized by old vessels which are expensive to maintain, relatively inefficient, and subject to high and rapidly increasing insurance rates. Concurrent with this, in many fisheries the fishermen or crews receive relatively low earnings for the high number of hours they work. New fishermen have not been attracted to these fisheries and the average age of the fishermen seems to be rising steadily.

Much of this has been attributed to the high rate of foreign fishing. There is little doubt that with some species (haddock, for example) the intense foreign effort has resulted in biological overexploitation and considerable economic waste for the domestic fishing industry. However, the high rate of foreign fishing, the old age of vessels and crewmen, and the low earnings to labor and capital in certain fisheries are primary symptoms rather than causes. That is, these are characteristic of a common property resource in which there is no ownership of the resource and thus entry (either by foreign or domestic interests) into the fishery takes place as long as there is economic rent or profit to be earned. This means that in any fishery, unless there are restrictions on entry, fishing effort tends to increase to a level where average profits—or economic rent attributable to the resource—is dissipated. Therefore, while some vessels in each fishery earn a profit, the tendency is toward zero profits, with the result being old crewmen and vessels and low earnings to labor and capital.

Many individuals in the commercial fishing industry and in the Federal and State agencies responsible for fishery management recognize the need to take positive steps to improve this situation. While certain constraints on domestic entry in American fisheries are often necessary, such controls would not be effective unless analogous controls apply to foreign vessels fishing the same stocks. It is critical to U.S. fisheries, generally, that rapid progress be made in obtaining international agreements to rationally control fishing effort.¹

The U.S. commercial fishing industry consists of approximately 150,000 fishermen, 1,800 processors, 1,200 wholesalers, and 2,000 importers/exporters, plus frozen and canned food distributors and chain

¹ The above four paragraphs were extracted from Gates and Norton, 1974. *The Benefits of Fisheries Regulation: A Case Study of the New England Yellowtail Flounder Fishery*. Marine Technical Report No. 21, University of Rhode Island, Kingston.

store, restaurant, and institutional buyers. There are also approximately 85,000 people employed in processing and wholesaling fish products.

It is largely although not entirely composed of many small enterprises spread along the coastal States and throughout much of the interior of the country. An estimated 80 percent of the fishing craft in the United States is individually owned and 84 percent is under 5 tons. Small-unit operation also is characteristic of the processing industry. Only a few large companies exist. About 42 percent of the plants have sales of less than \$100,000. Only 17 percent have sales of over \$1 million and only 2.7 percent (43 plants) have sales of over \$10 million. The few companies that may be considered giants in the fish industry are quite small when compared to large companies in other areas of food processing.

World landings have tripled since 1938. See Figure 1. U.S. landings in the same time rose in the aggregate only slightly, from 4.3 billion pounds in 1938 to 4.7 billion pounds in 1973. A gradual rise to the 1960s, reaching a high of 5.3 billion pounds, was followed by a decline to the 4.7 billion pound level. Despite a rising demand in the U.S. for fisheries products, the U.S. fleets, with the exceptions principally of the shrimp, tuna, and menhaden fleets, generally have remained undeveloped or have deteriorated. Processors have had to rely more and more on imports to meet domestic demands.

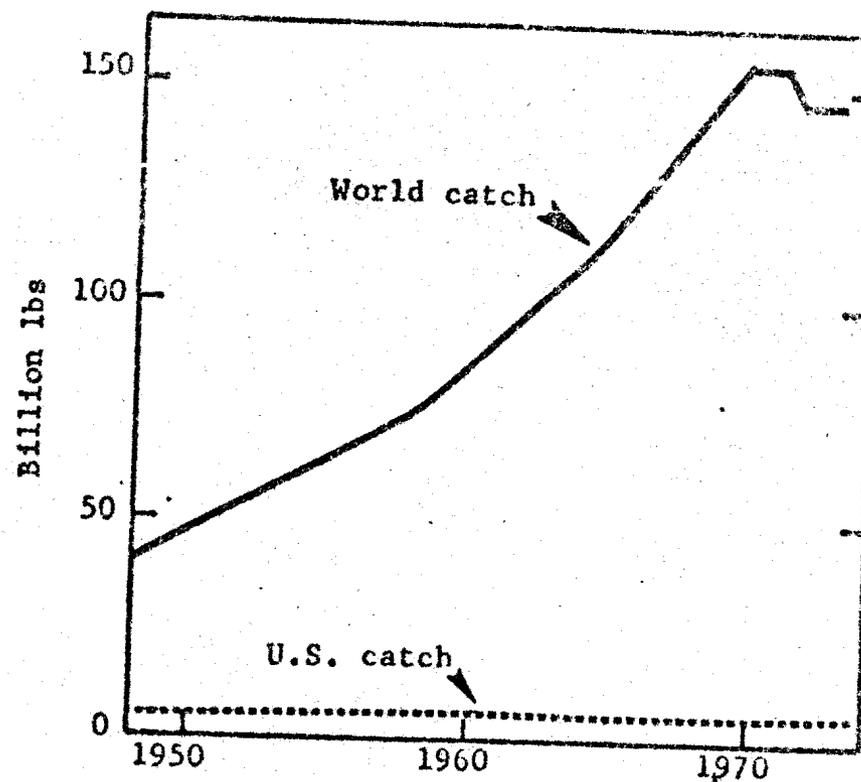


FIGURE 1. U. S. and world catches.

It has been stated that the overall volume of U.S. catches has remained essentially static over the last twenty years. This is not true of the U.S. consumption of fishery products, which has nearly doubled in this period. To meet this need, U.S. imports more than tripled between 1959 and 1973—from 1.75 billion pounds to 5.5 billion pounds. Imports of edible fisheries products, increasing steadily, more than quadrupled in the 1959–1973 period. See Figure 2. On the other hand, imports of industrial products, consisting principally of fish meal, reached a high point in 1968 and then declined—due largely to a reduction in fish meal supplies from Peru—to their lowest level since 1950. The overall record is one of increasing dependence by the U.S. on the products of other nations' fisheries. The total value of such imports in 1973 was \$1.14 billion. The volume in round weight was twice that of the U.S. catch.

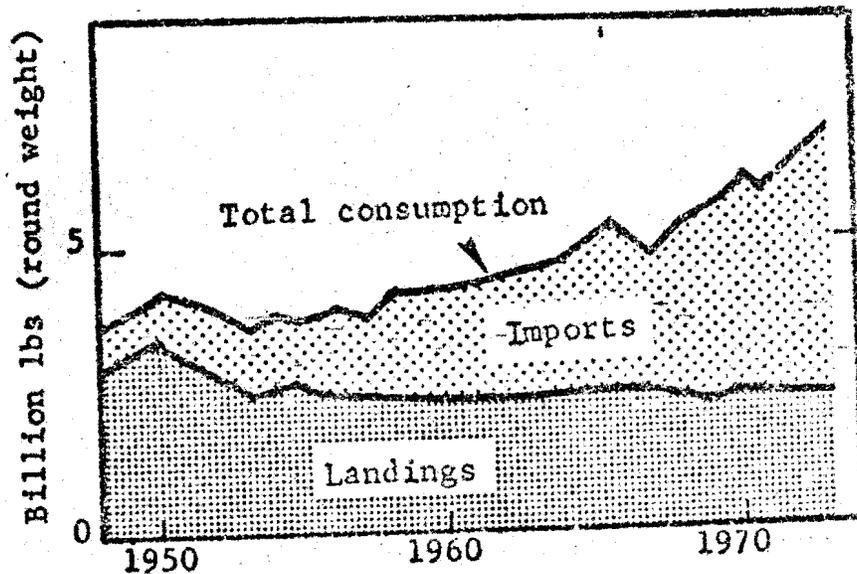


FIGURE 2. U.S. landings, imports, and consumption of edible fishery products.

To give some further measure of the growth of imports, in 1950 the United States imported only 23.4 percent of its seafood while in 1974 imports were over 60 percent. Although the United States has only 6 percent of the world's population and catches 2.5 percent of the total world catch of seafood, its residents consume about 7 percent of the world's seafood production. This desire for seafood led to a 1972 adverse balance of payments of \$1.3 billion in fish and fisheries products—up 318 percent since 1960.

A study, *A Baseline Economic Forecast of the U.S. Fishing Industry, 1974–1985*, developed for the NMFS by Synergy, Inc., was based upon the most complete data currently available and predicts U.S. landings and imports of 12 categories of fish consumption. The forecast assumes that historical trends and conditions will continue—especially that there will be no extension of U.S. jurisdiction, that latent fisheries resources will not be developed on a broad scale, that NMFS programs

will remain at present levels with no major alterations in program composition, and that international cooperation and sound domestic management will prevent overfishing. Proceeding from these assumptions, and using accepted econometric methods, the Synergy study makes its "baseline" forecasts. Among the conclusions:

Edible supplies of seafood products will increase from 7.0 to 9.3 billion pounds (round weight) by 1985. But of this total increase of 2.3 billion pounds, 2.2 billion pounds—about 96 percent—will come from imports.

Total U.S. landings will rise only slightly, from the 4.7 billion pounds (round weight) of 1973 to 4.9 billion pounds in 1985.

In the commercial harvesting sector, employment, average wages, net revenues, and productivity will increase at rates experienced before 1973, although significant gains may be achieved in wages and net revenues.

In the commercial processing sector, no more than moderate gains are expected by 1985.

The Synergy forecasts, summarized in Table 2 may be considered reference points from which any improvements in the future of the marine fisheries can be measured.

TABLE 2.—SUMMARY OF HISTORICAL AND FORECAST DOMESTIC LANDINGS, IMPORTS, AND TOTAL SUPPLIES BY WEIGHT AND VALUE, 1965–85

	Historical		Forecast		
	1965	1973	1975	1980	1985
Weight (millions of pounds round weight):					
Total U.S. edible landings ¹	2,587	2,328	2,399	2,408	2,415
Total edible imports ¹	2,576	4,709	5,128	6,020	6,929
Total edible supplies ¹	5,163	7,037	7,527	8,428	9,344
Total U.S. industrial landings ¹	2,190	2,404	2,520	2,520	2,520
Total industrial imports ¹	3,182	811	4,453	6,023	7,609
Total industrial supplies ¹	5,375	3,215	6,973	8,543	10,129
Total supplies ¹	10,535	10,252	14,500	16,971	19,473
Exvessel value (millions of 1967 dollars):					
Total U.S. edible landings ²	433	613	649	738	808
Total edible imports ²	507	972	1,054	1,237	1,424
Total edible supplies ²	940	1,585	1,703	1,975	2,232
U.S. industrial landings ²	39	68	43	49	54
Industrial imports ²	129	139	162	219	276
Total industrial supplies ²	168	207	205	268	330
Total supplies ²	1,108	1,792	1,908	2,243	2,562

¹ Historical Source: "Fisheries of the United States, 1973", p. 55.

² Ibid., p. 56 and past issues of "Fishery Statistics of the United States."

Note: All value terms were converted into 1967 dollars.

In short, fisheries play a large role in the national diet by both direct and indirect consumption, but our domestic fishing fleet is catching less and less of the fish consumed as more and more is being demanded. Meanwhile, the most important and valuable species of fish are being depleted. Dr. Robert M. White, Administrator of the National Oceanic and Atmospheric Administration, has warned that by 1980 the world's fishing fleets are expected to catch 100 million metric tons of fish. According to Dr. White, scientists feel that 100 million tons is the maximum number of fish capable of being taken from the sea without biological harm to world breeding stocks. World fleets now harvest, according to the most reliable figures, 70 million tons of fish. It is clear to the Committee that if we are indeed to prevent

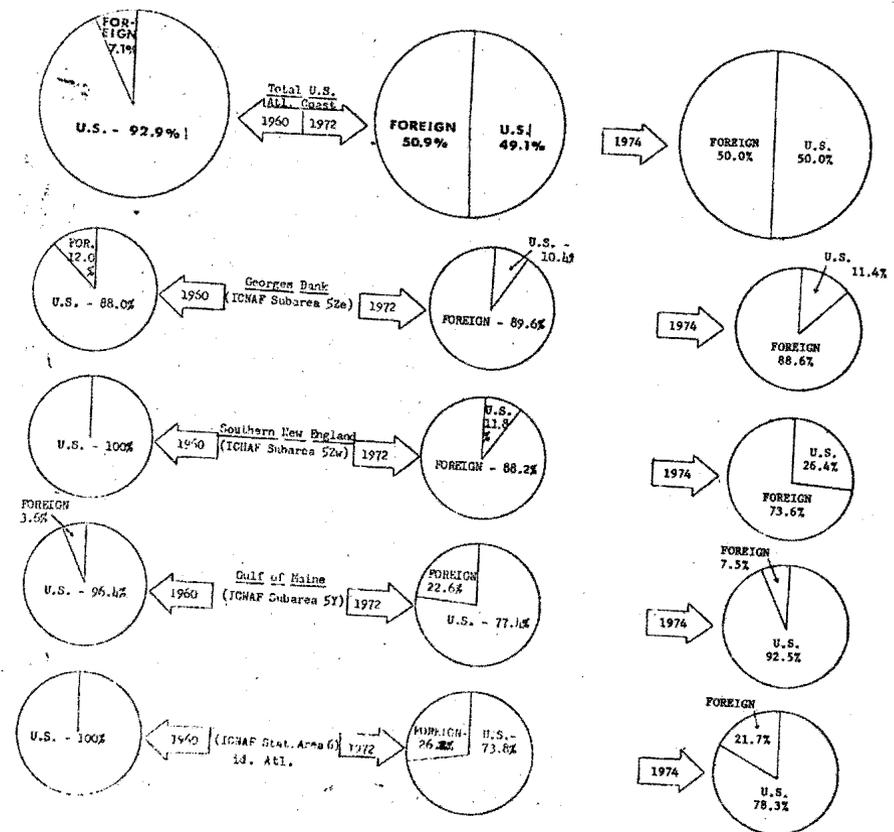
the elimination of an important source of protein for the United States and the world, strong action must be taken to prevent further depletion and to bring technologically advanced fishing efforts under control.

III. HISTORY OF FOREIGN FISHING OFF U.S. SHORES

As pointed out earlier, the controversy in the Pacific Northwest concerning the efforts of Japanese vessels to harvest Bristol Bay salmon stocks was the impetus for the Truman Fisheries Proclamation and, in effect, the beginning of serious U.S. concern over foreign fishing efforts off its shores. Following World War II, the United States, Canada, and Japan negotiated and signed the International North Pacific Fisheries Convention, designed to deal with at least in part, the added pressure on salmon stocks. The salient agreement in this convention, which still has implications for fishing policies today, was the agreement by Japan to abstain from fishing for salmon east of the 175th west meridian. At that time, it was felt that if the Japanese abstained from catching North American salmon stocks east of that line, the stocks would be protected. However, since then, it has been shown that the salmon range far beyond the boundary line and Japan is able, because of its technologically advanced fishing capabilities, to catch a large number of salmon after they reach the abstention line. It was not until the late 1950's and early 1960's that the rest of the nation began to feel the pressure from growing numbers of foreign fishing trawlers.

Fish and shellfish stocks off the U.S. coast are an enormous renewable resource; the annual harvest by foreign and U.S. fishermen currently averages 11 billion pounds, valued at approximately \$6.6 billion retail. The potential annual catch from the U.S. coastal resource is estimated between 20 and 40 billion pounds worth at least \$12 billion retail. A recent U.S. Senate study predicts that the value of the landed product may increase more than 500 percent in constant dollars by the year 2000. These resources are subject to competitive harvesting by foreign and domestic fishermen; 14,000 U.S. vessels over 5 gross tons and up to a thousand foreign vessels, most over 250 tons.

A good example is the New England fishing grounds. Before 1960, the Georges Bank fishing area was used exclusively by U.S. fishing vessels, except for a few Canadian fishermen. In 1961, Soviet fishing vessels reported taking 68,000 tons of fish off Georges Bank. By 1965, Soviet exploitation had expanded to the Continental shelf area of Georges Bank down to the Chesapeake Bay and their catch reached over a half million tons, far in excess of the United States catch. By 1970, several other countries had joined in the harvest and the foreign take grew to more than 1 million tons, far in excess of the allowable harvest recommended by the scientists of the United States and other countries. The U.S. share began to decline and in 1972 our fleets took only about 12 percent of the catch in the southern New England area and only 10 percent from the Georges Bank area. In 1960 the United States took 92.9 percent of the total catch off the Atlantic coast. By 1972, the U.S. share of the total catch had been reduced to 49.1 percent. The 1974 data reflected localized improvements but the U.S. share of the total take on the Atlantic Coast was but 50 percent (see figure 3).



Source: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, August 1975.

FIGURE 3. United States versus foreign percent of total catch in Atlantic coastal waters, 1960, 1972, 1974.

Between 1950 and 1969 the world production of fish multiplied about threefold, from 20 million metric tons to about 63 million metric tons; yet the U.S. share of the catch has remained at a relatively fixed level of between 2.0 and 2.2 million tons. Thus while the U.S. take off its shores has remained relatively stable, or declining in certain locations, foreign efforts have increased monumentally over the past fifteen years. Other nations with large and efficient fleets—many subsidized and carrying the most technologically advanced equipment—have experienced substantial increases. Gains recorded by six leading fishing nations are reflected in data published by the United Nations Food and Agriculture Organization (FAO). The gains (the totals including shell weights) were these: Japan, 18.1 to 22.4 billion pounds; U.S.S.R., 3.3 to 16.2 billion pounds; China 5.9 to 16.7 billion pounds; Norway, 2.4 to 7.0 billion pounds; and Peru, 0 to 10.6 billion pounds. In Peru the rise actually was 23.3 billion pounds by 1971, but the 1972 landings fell suddenly to 10.6 billion pounds because of reduced catches in the anchovy fishery.

This situation has led to overfishing of at least 10 major commercial stocks (Alaska pollock, California sardine, haddock, halibut, herring, ocean perch, Pacific mackerel, sablefish, yellowfin sole, yellowtail flounder), resulting in serious economic consequences. For example, overexploitation of the California sardine and the haddock off New England has resulted in an accumulated loss to fishermen in excess of half a billion dollars as of 1974. (See Table 3.)

TABLE 3.—DEFICITS IN LANDED CATCH INCURRED BY TWO OVER-EXPLOITED FISHERIES
U.S. HADDOCK CATCH—1962-66 AVERAGE 131,900,000 POUNDS

Year	Catch (lbs. K)	Deficit (lbs. KK)	Price (\$/lb.)	Deficit (\$KK)	5 percent compounded (\$KK)
1967	98.3	33.6	.11	3.7	5.0
1968	71.3	60.6	.13	7.9	10.1
1969	42.6	89.3	.17	15.2	18.5
1970	26.8	105.1	.22	23.1	26.7
1971	21.6	110.3	.26	28.7	31.6
1972	11.7	120.2	.37	44.5	46.7
1973	8.2	123.7	.39	48.2	48.2
Total		642.8		171.3	186.8

U.S. CALIFORNIA SARDINE CATCH—1946-50 2,460,000,000 POUNDS TOTAL

Year	Catch (lbs. K)	Deficit (lbs. KK)	Price (\$/lb.)	Deficit (\$KK)	5 percent compounded (\$KK)
1951-55	564	1,896	0.02	37.9	100.4
1956-60	452	2,008	.02	40.3	83.9
1961-65	80	2,380	.02	47.6	77.6
1966-70	1	2,459	.02	49.0	62.6
1971-73	1	1,476	.02	29.4	30.0
Total		10,219		204.2	355.4

Source: National Marine Fisheries Service, NOAA, Department of Commerce.

Table 4 demonstrates the magnitude of foreign fishery vessel operations off U.S. coasts in fiscal year 1975. Figures 4-7 provide graphic indications of the nature and extent of the impact of foreign fishing vessels off U.S. coasts in just 1 month—April 1975.

TABLE 4.—FOREIGN FISHERY VESSELS OPERATING OFF U.S. COASTS DURING FISCAL YEAR 1975*

Fishing grounds	Stern trawlers ¹	Medium trawlers ²	Other fishing vessels	Process and transport vessels	Support vessels ³	Research vessels ⁴	Total
Off Pacific coast:							
Off Alaska:							
Japan	534	751	1,098	208	23	2	2,616
Poland	6	0	0	0	0	0	6
Republic of China	5	0	0	0	0	0	5
Republic of Korea	17	61	37	6	0	0	121
Soviet Union	250	374	1	59	40	5	729
Other	0	0	0	0	0	0	0
Total	812	1,186	1,136	273	63	7	3,477
Off Pacific Northwest:							
German Democratic Republic	0	0	0	0	0	0	0
Japan	14	0	10	1	1	0	26
Republic of Korea	0	0	24	0	0	0	24
Poland	33	0	0	2	2	0	37
Soviet Union	215	3	11	38	14	12	293
Federal Republic of Germany	2	0	0	0	0	0	2
Total	264	3	45	41	17	12	382
Off California:							
German Democratic Republic	0	0	0	0	0	0	0
Japan	10	0	0	0	1	0	11
Poland	53	0	0	4	1	0	58
Republic of Korea	0	0	1	0	0	0	1
Soviet Union	339	1	3	24	18	11	396
Federal Republic of Germany	6	0	0	0	0	4	10
Total	408	1	4	28	20	15	476
In the Gulf of Mexico:							
Cuba	0	49	40	0	4	0	93
Japan	0	0	26	0	0	0	26
Mexico	0	6	2	0	0	0	8
Soviet Union	0	0	0	0	0	0	0
Canada	0	0	2	0	0	0	2
Total	0	55	70	0	4	0	129
Off the Atlantic coast:							
Bulgaria	44	0	0	6	0	0	50
Canada	6	0	0	0	0	0	6
Federal Republic of Germany	41	0	0	2	1	3	47
France	4	0	0	0	0	1	5
German Democratic Republic	98	74	0	17	3	2	194
Ireland	11	0	0	0	0	0	11
Italy	37	0	0	0	0	0	37
Japan	104	0	54	4	0	0	162
Norway	0	0	1	0	0	0	1
Poland	199	58	0	34	0	2	293
Romania	7	0	0	0	0	0	7
Soviet Union	778	161	265	112	22	9	1,347
Spain	88	31	60	0	0	0	179
Total	1,417	324	380	175	26	17	2,339
Grand total	2,901	1,569	1,635	517	130	51	6,803

*Excludes duplicate sightings within the same month—includes repetitive sightings from 1 month to the next.

¹ Includes all classes of stern factory and stern freezer trawlers.

² Includes all classes of medium side trawlers (nonrefrigerated, refrigerated, and freezer trawlers).

³ Includes fuel and water carriers, tugs, cargo vessels, etc.

⁴ Includes exploratory, research, and enforcement (E) vessels.

Source: National Marine Fisheries Service, Law Enforcement Division, NOAA, Department of Commerce.

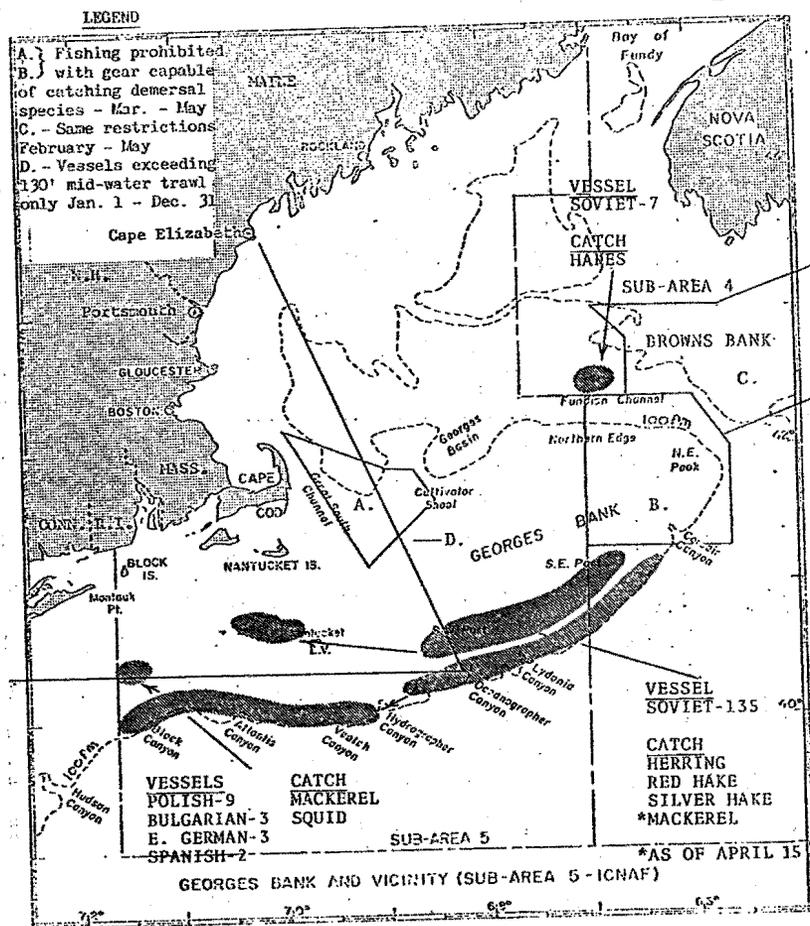


FIGURE 4. Foreign vessels in the Northwest Atlantic in April 1975 by country, number of vessels, principal fishing grounds, and the species fished.
 Source: National Marine Fisheries Service, NOAA, Department of Commerce.

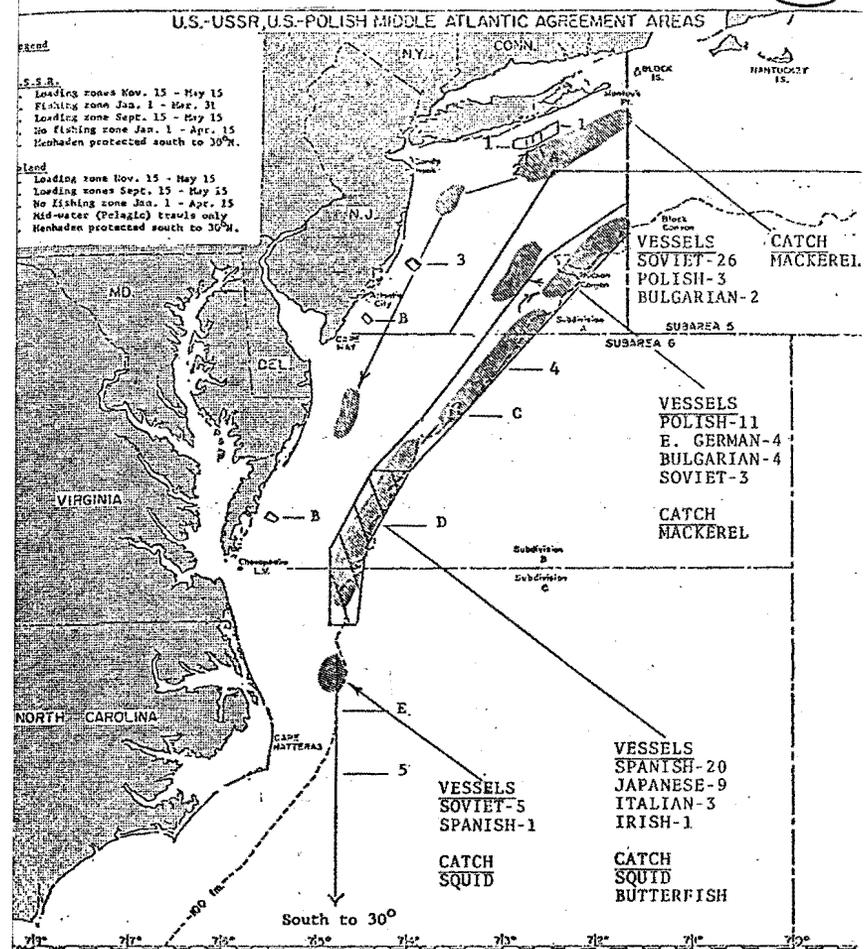


FIGURE 5. Foreign vessels in the Middle Atlantic in April 1975 by country, number of vessels, principal fishing grounds, and the species fished.

Source: National Marine Fisheries Service, NOAA, Department of Commerce.

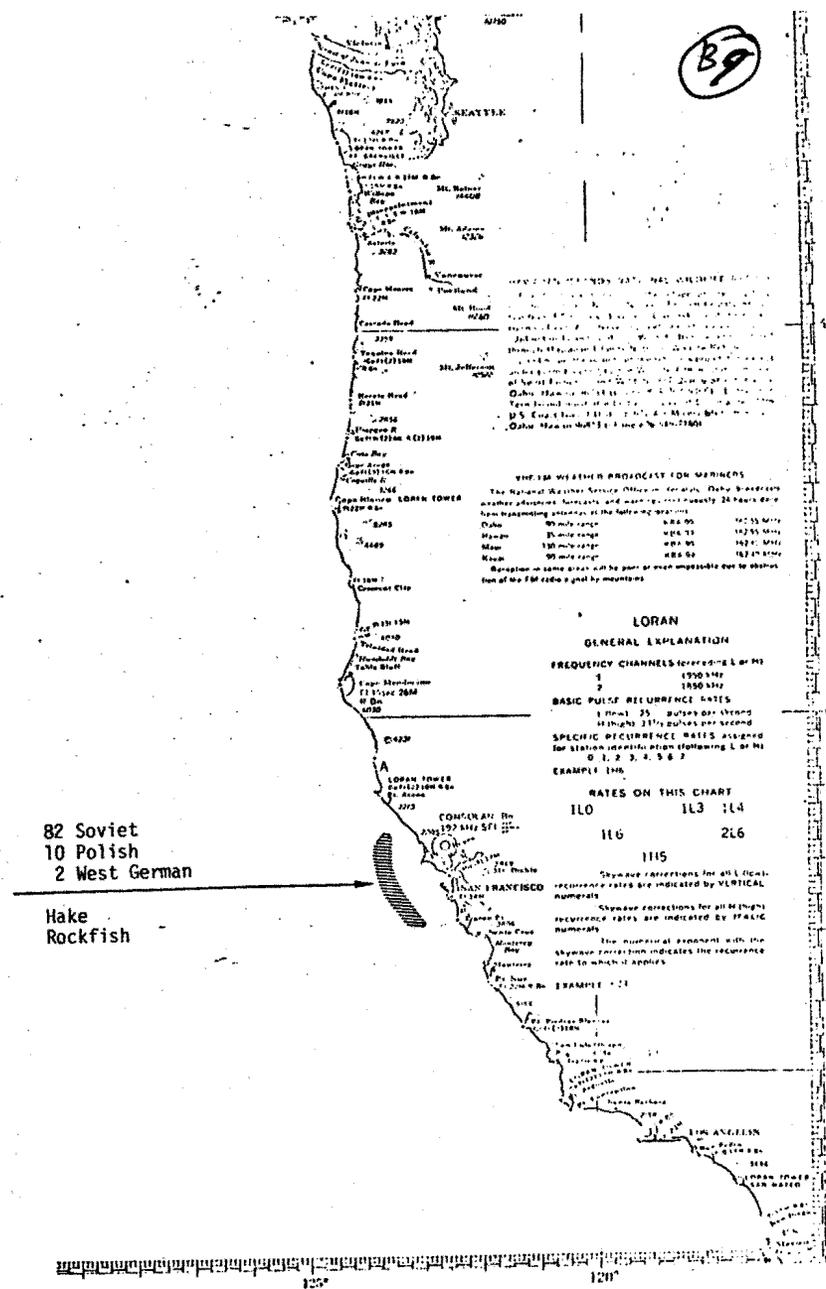


FIGURE 6. Foreign vessels in the Pacific Northwest in April 1975 by country, number of vessels, principal fishing grounds, and the species fished.

Source: National Marine Fisheries Service, NOAA, Department of Commerce.

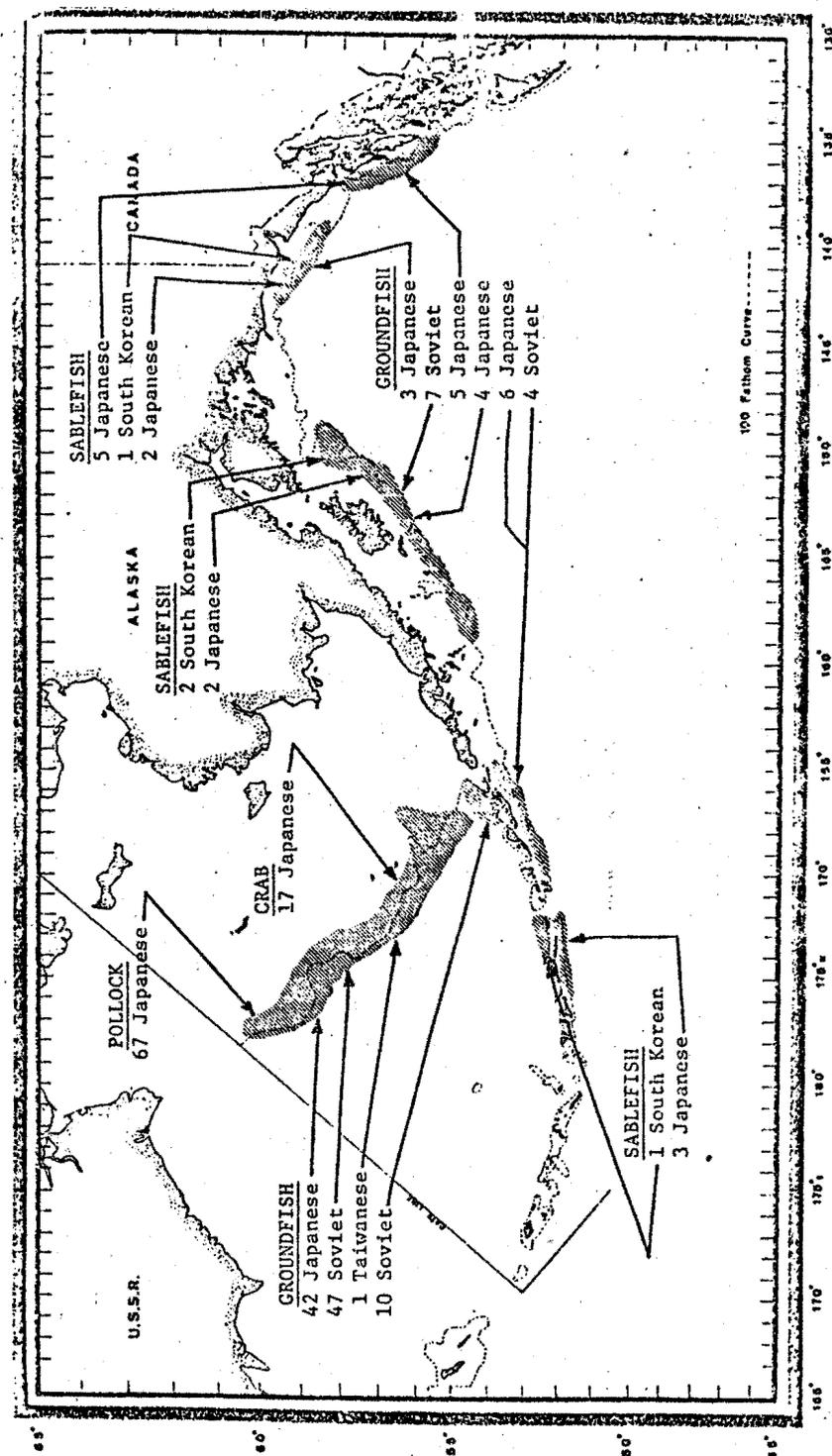


FIGURE 7. Foreign fishing off Alaska in April 1975, by country, principal fishing grounds and species.

Source: National Marine Fisheries Service, NOAA, Department of Commerce.

IV. INADEQUACIES OF INTERNATIONAL FISHERIES AGREEMENTS

The decline in many of the fisheries off our coast has been coincidental with increased foreign fishing in major areas along our continental shelf and beyond our existing 12-mile fishery jurisdictional limit. Current international, national and state conservation efforts are not successfully preventing the depletion of fisheries resources of the greatest economic importance. The normal process of negotiating fishery agreements is time consuming and complex. Nations wishing to continue a high level of fishing effort while negotiating can easily slow down or impede progress of such negotiations, and without mutual agreement, there are no binding treaties. Moreover, a number of existing agreements admittedly have resulted in over-fishing, and the signatory nations have been reluctant to reduce their efforts accordingly. Presently, the United States is party to well over a score of international fishing agreements and periodically engages in bilateral and multilateral negotiations with foreign nations to restructure these treaties and to frame new ones which seek to conserve fish resources. Nearly all of the stocks of fish considered to be depleted or threatened with depletion are subject to these international agreements (see Appendix I).

In those instances where agreements are reached, the problem of enforcement has been chronic. Traditionally, international fishery agreements provide for the enforcement by each signatory nation as to their own citizens. For example, if a Soviet fleet is operating off U.S. shores pursuant to an international agreement, it is the duty of Soviet officials to enforce that agreement on their citizens. It is easy to see, however, why a nation, which on the one hand has directed its fishing fleet to return a high quota of fish, may not be as diligent as is necessary to enforce full compliance with international agreements. In many cases, it would appear that effective sanctions are completely lacking and violations often go unpunished. Meanwhile, U.S. fishermen see themselves as being tightly regulated by Government officials to comply with U.S. responsibilities under any such agreement. They claim that while they must toe the line, foreign fishermen are not forced to toe the same line. Furthermore, it is difficult to imagine that a nation with a long distance fishing fleet which can pick up and move to any part of the world would ever be strongly concerned about conserving fisheries in any one particular area. In contrast, fishermen who live a relatively short distance from a fishing ground have a much greater interest in conserving the fish that inhabit the waters near their home.

The Committee has concluded that historical evidence does not justify rational faith in the ability of such international agreements alone to provide the necessary protection and management of our invaluable fishery resources, nor to assure domestic fishermen of the protection to which they are entitled in making their living from resources produced in American waters in at least some significant phase of the life cycles of such resources.

V. IMPLICATIONS FOR SALMON, SHRIMP AND TUNA INDUSTRIES

In addition to the objections of the State Department and others fearful of adverse impacts of unilateral action on the progress of the Law of the Sea Conference, some segments of the American fishing

industry have expressed concern or even out-right objection to the extension of fishing jurisdiction promoted by this legislation. Distant water fleet owners (principally shrimp and tuna fisheries) fear that enactment of H.R. 200 will eradicate the traditional U.S. policy of freedom of fishing up to 12 miles from any foreign nation's shoreline (a change seemingly already in evolution given the emerging consensus at the Caracas and Geneva meetings of the Law of the Sea Conference). The salmon industry fears that if the United States were to assert a 200 mile fishing limit and jurisdiction over anadromous species of fish, a series of events will occur leading to increased capture of salmon by foreign nations, particularly Japan. They feel that assertion of jurisdiction over anadromous species may simply not be recognized by nations fishing for salmon on the high seas. This school of thought also holds that once the U.S. declares a 200 mile limit, the Japanese will abrogate the International North Pacific Fisheries Treaty and fish for salmon within the abstention line and up to the edge of the 200 mile zone. Since they fear Japan has the capacity to take a significant portion of the salmon which should return to the United States, the domestic catch will thus be severely restricted. A counter-argument can be made, however, that other fish the Japanese presently take within 200 miles of our coasts are more important to them than salmon thus giving the U.S. negotiating leverage with which to protect high seas salmon in return for access into the 200 mile zone for other species.

So far as tuna and shrimp interests are concerned, H.R. 200 addresses their concerns in two ways. Highly migratory species, such as tuna, are declared to be subject to regulation by international agreements and that coastal nations have no authority unilaterally to regulate the taking of such fish. Secondly, the Act explicitly encourages bilateral agreements. The Brazil shrimp fisheries agreement is an example where American fishermen have successfully negotiated fishing rights within an area over which another nation has claimed jurisdiction. Since the U.S. has indicated willingness in under-exploited fisheries to accept foreign entry into such fisheries and since this bill also provides for negotiated recognition of certain fishing by foreign nations within the U.S. zone, it follows that reciprocity from other countries can be expected in return in the case of U.S. fishing practices within the 200 mile zone of others. In short, while the Committee has certainly been most mindful of the legitimate concerns and arguments of these sectors of the fishing industry, it believes the bill it is reporting has sufficient features to protect these fishing interests to the greatest extent possible consistent with wise resource management and the necessary adjustments which a change in fishing jurisdiction regimes inevitably require.

VI. SUMMARY: A BRIEF FOR UNILATERAL ACTION

After several years of painstaking fact-finding and deliberation, the Committee has concluded that many of the important American fish stocks have been over-exploited, some, like haddock, to the point of essentially commercial extinction, and many others are threatened with a similar fate. The Committee concludes that the depletion of these stocks is in large measure attributable to the phenomenal increase in recent years in the number of technologically sophisticated

and very efficient foreign fishing vessels in waters off United States coasts, and that if such fishing pressure is not regulated and reduced immediately, irreversible damage may well be done to important fish stocks and to American fishing interests alike. While gladly conceding that an inevitable goal must be reform and increased sophistication in international law and other appurtenances of international agreement, the Committee is resolute in its conviction that the time required to effect needed adjustments in the arena of international law are such as to make the conservation of many fish stocks and the welfare of our domestic fishing industry almost moot unless immediate, or at least short-term, action is taken without further delay. Accordingly, the unilateral action represented by this bill is specifically keyed to eventual supercession by the new Law of the Sea agreements at such time as they are achieved and enter into force.

As the National Advisory Committee on Oceans and Atmosphere says so well in its report to the President and Congress:¹

The major new challenge is *fisheries management*. Instead of the living resources of the sea belonging to no one, a world consensus is developing which would place the exclusive jurisdiction of most fisheries and other living resources with the coastal nation. For the United States, with one of the longest coastlines of any nation and some of the richest fishing areas of the world ocean, this virtual ownership of vast fisheries resources, which may well be capable of producing on the order of ten million tons of food per year, presents a new opportunity for our people and new responsibility for our government.

Many of our fishery resources have been overfished. Some of the overfishing has been caused by U.S. fishermen, but in recent years serious depletion of some of the largest and most important resources found off our coast is traceable to the influx of hundreds of foreign fishing vessels.

The challenge is to initiate a new management program which stresses the conservation and rational allocation of these resources. A wise and forward looking program will rehabilitate our domestic fisheries while permitting controlled fishing by foreign fleets on those stocks not used or not fully used by U.S. fishermen.

The National Advisory Committee report, speaking of the National Fisheries Plan currently in preparation by the National Marine Fisheries Service, then goes on to say:

We believe that this Plan, in conjunction with national legislation asserting jurisdiction over the living resources of a 200-mile Economic Resource Zone, and establishing some effective national control over fishing in this Zone by U.S. and foreign fishermen, will for the first time in our history, give our Nation and fishermen a greater opportunity to benefit economically and increase our food supply from these resources, while at the same time place on our Government the obligation to conserve and wisely use our fisheries.

¹ Draft review copy, dated June 30, 1975.

The Committee believes it has wisely and equitably addressed both the need for increased jurisdiction and improved fisheries management with this bill.

WHAT THE BILL DOES: SECTION-BY-SECTION ANALYSIS

As indicated in the legislative background of the report, the Committee ordered reported to the House H.R. 200, with amendments. This was accomplished by striking out all after the enacting clause and substituting new language and amending the title to the bill.

There follows a section-by-section summary of H.R. 200, accompanied by discussion where appropriate.

SECTION 1—SHORT TITLE

Section 1 would provide a short title for the legislation, to be cited as the "Marine Fisheries Conservation Act of 1975."

SECTION 2—CONGRESSIONAL FINDINGS, POLICY, AND PURPOSES

(a) *Findings*.—In subsection (a), Congress would find and declare that the fisheries resources of the United States and highly migratory species constitute an irreplaceable resource which contribute to the food supply and economy of the Nation and the health and recreation of its people; that certain stocks of these species have been the target of concentrated foreign fishing and, as a result of such fishing effort and the failure to observe sound conservation practices, certain species have become depleted to the point where the survival of the fisheries is threatened; that commercial and recreational fishing constitutes a major source of employment and contributes to the economy of the Nation and the depletion of these fisheries resources threatens the social and economic welfare of the coastal areas concerned; that United States fishermen have had their fishing efforts interfered with and their fishing gear destroyed as a result of such foreign fishing within waters off its coastal shores and without compensation for their losses; that international agreements have not been effective in halting the overfishing and depletion of these coastal stocks of fish; that both United States fishermen and foreign fishermen fish on the high seas off the coasts of the United States where no regime of law applies to foreign fishing or to require conservation practices, except pursuant to specific international agreements; that fisheries resources are renewable and if placed under sound management before depletion has caused irreversible effects can be restored to provide optimum sustainable yield and it would be in the national interest and the interest of all nations and peoples engaged in both commercial and recreational fishing to provide for such an effective management program; and that developing international law at the United Nations Conference on the Law of the Sea proposes primary coastal state management and preference over coastal species in an economic zone extending to 200 miles and host state management and preference over its anadromous species.

(b) *Policy and Purposes*.—In subsection (b), the Congress would declare it to be the policy and purposes of this Act for the United States to assume responsibility to manage and conserve the fisheries

resources of the United States in an exclusive fisheries zone extending to 200 miles off its coastal shores, except highly migratory species (such as tuna), and to assume responsibility and management over anadromous species to the extent of their range; to support and encourage international measures for the conservation and management of highly migratory species on the basis of international fisheries agreements; to promote and encourage the fishing industries of the United States to maximize food production and recreational opportunities under sound conservation and management principles; to establish sound management programs which will achieve and maintain optimum sustainable yield from such fisheries resources; to permit foreign fishing within the 200-mile fisheries zone consistent with the conservation requirements of the various stocks, if there are excess stocks of fish not being utilized to the optimum sustainable yield by United States fishermen, after there is taken into account the efforts of United States fishermen to develop new and expanded fisheries and the fact that certain stocks of fish United States fishermen are dependent upon are now depleted; to support and encourage efforts on the part of the United States to obtain an internationally acceptable fisheries treaty at the United Nations Conference on the Law of the Sea; to maintain without change the existing jurisdiction and rights of the United States in the Continental Shelf and the waters above the Shelf, other than the protection and conservation of fisheries resources as provided by this Act; and not to authorize any impediment to, or interference with, lawful activities on the high seas, except as they may relate to the conservation and protection of fisheries resources as provided by this Act.

SECTION 3—DEFINITIONS

Section 3 would define the various terms used throughout the bill, which are as follows: "anadromous fish"; "coastal species" (which would include all species of fish other than anadromous, continental shelf, and highly migratory species); "Continental Shelf species"; "depleted"; "fisheries zone"; "fish" (which would include in general all forms of marine animal and plant life other than birds and marine mammals); "fishery"; "fishing"; "fishing vessel"; "international fisheries agreement" (which would include any bilateral or multilateral fisheries treaty, convention, or agreement to which the United States is a party); "Marine Fisheries Commission"; "highly migratory species"; "optimum sustainable yield"; "person"; "Secretary" (which would mean the Secretary of Commerce); "State"; "stock"; and "United States".

Of the terms defined in the bill, there are four of such terms on which comments need to be made. The terms are "depleted", "optimum sustainable yield", "highly migratory species", and "State".

Optimum sustainable yield

The underlying management concept of this Act is embodied in the term "optimum sustainable yield." This concept is the cornerstone of the Congressional Findings and Statements of Policy and Purposes set forth in section 2 of the Act. All of the specific criteria set forth in title III of the Act, governing the promulgation of fisheries management

plans and governing the review of such plans by the Secretary of Commerce, are designed to insure that the goal of optimum sustainable yield will be achieved.

Optimum sustainable yield is a refinement of, and takes as a point of departure, the traditional fisheries biology concept of maximum sustainable yield (MSY). MSY is simply a tool by which the level of harvest of a given stock of fish can be determined. It is in essence, the surplus production of the fishery; the safe upper limit of harvest which can be taken consistently year after year without diminishing the stock so that the stock is truly inexhaustible and perpetually renewable.

The measurement of MSY as a scientific tool has been refined dramatically in the past decade to the point where today fisheries biologists are no longer dealing with the MSY of individual stocks, but are rather dealing with the MSY of the integrated biomass of large ocean areas such as the Northwest Atlantic Ocean. This is particularly critical today when certain stocks within a large biomass are depleted and others are still in abundance. The depleted stocks may be secondary targets or even unavoidable targets of the fishing effort for stocks in abundance. The concept of maximum sustainable yield is well understood, not only by expert fisheries biologists, but by fishermen also. For this reason, there was considerable support before the Committee for adopting MSY as the basis for management. On the other hand, a responsible body of opinion supported the proposition that the Committee should not give statutory recognition to MSY since it was felt that the concept had been discredited as an effective management tool, largely as a result of the notable failures of the International Commission for the Northwest Atlantic Fisheries under the ICNAF Convention. The Committee believes that the failure of ICNAF has not discredited MSY as a management tool, but rather points up clearly the fact that MSY is only a tool and cannot be expected to accomplish anything in the absence of a sound, comprehensive management system. The Committee believes that MSY must be established for each managed species before intelligent decisions regarding optimization of fisheries can be achieved.

Once the MSY of the fisheries or stock has been determined with reasonable scientific accuracy, and the same determination made with respect to the total biomass of an ocean area where many different, but inter-related fisheries occur, the developer of a management plan can begin to think in terms of the optimum sustainable yield (OSY). Thus while biologists in the past have tended to regard any unused surplus of a fishery as waste, the resource manager may well determine that a surplus harvest below MSY will ultimately enhance not only the specific stock under management, but also the entire biomass. Conversely, the fisheries manager may determine that the surplus harvest of the entire biomass must be reduced substantially below MSY, in order to restore a valuable depleted stock which is taken incidentally to the harvesting of other species in this biomass. An example of such a situation has occurred in the Northwest Atlantic where mindless overfishing for haddock has virtually wiped out the species. A zero quota for haddock will not permit that species to restore itself since other fisheries in the Northwest Atlantic cannot be conducted without taking haddock. Accordingly, the harvest of these other species must be reduced below their MSY to reduce the incidental catch of haddock.

The preceding concepts relate to the biological well-being of the fishery. The concept of optimum sustainable yield is, however, broader than the consideration of the fish stocks and takes into account the economic well-being of the commercial fishermen, the interests of recreational fishermen, and the welfare of the nation and its consumers. The optimum sustainable yield of any given fishery or region will be a carefully defined deviation from MSY in order to respond to the unique problems of that fishery or region. It cannot be defined absolutely for all stocks of fish or groups of fishermen, and will require careful monitoring by the Regional Marine Fisheries Councils and the Secretary of Commerce. While optimum sustainable yield may have many complex components, their quantification should not be beyond the capability of the broad range of individuals who will serve on the Councils, supported by trained economists and marine biologists. Optimum sustainable yield will, as indicated above, employ a well-understood and time-proven concept of maximum sustainable yield as its basis while allowing for other relevant economic and social inputs. The Committee believes that the careful balancing of roles and responsibilities under the Act between the Councils, the Secretary and the public will insure that these inputs are not distorted and that optimum sustainable yield will achieve the purposes of the Act.

Highly migratory species

The term "highly migratory species," as defined in the bill, means any species of fish which spawn and migrate during their life cycle in waters of the high seas, in and outside the fisheries zone, including—but not limited to tuna—but excluding halibut, sablefish, and herring. The highly migratory species which would be excluded from the coverage of this Act would include, among others, the following: Albacore tuna, bluefin tunas, bigeye tuna, skipjack tuna, yellowfin tuna, blackfin tuna, little tuna, Frigate mackerels, pomfrets, marlin, sailfishes, swordfish, sauries, dolphin (fish), and oceanic sharks.

The Committee is aware that there are a number of fish that are considered as migratory—as distinguished from highly migratory—that should not fall within the definition of highly migratory species. Therefore, such species as halibut, sablefish, and herring were specifically excluded from the definition of highly migratory species. The intent of the Committee is to make it clear that these species are covered by this Act and would be included in the list of species to which fisheries management responsibility and authority of the United States extends.

Depleted

The term "depleted," as defined in the bill, means a species of fish or a stock of the species that has been so reduced as a result of over-fishing or other natural or induced causes that a substantial reduction in fishing effort must be achieved in order for the stock to replenish itself and once again provide an optimum sustainable yield.

After considering the testimony and evidence offered at the hearings, the Committee has concluded that the following stocks of fish of direct interest and importance to United States fishermen are depleted: Alaska pollock, California sardine, haddock, halibut, herring, ocean perch, Pacific mackerel, sablefish, yellowfin sole, and yellowtail flounder. These resources have been and are the subject of competitive harvesting by both foreign and domestic fishermen.

The Committee is aware that there are other species of fish that will qualify as being depleted. The most obvious ones have been enumerated in this report. The Committee expects the Secretary to carefully study those species of fish that may possibly fall within this definition and take the necessary steps to see that they receive proper management as the results of improper management are reversible if appropriate action is taken in time.

State

The term "State", as defined in the bill, means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the possessions of the United States.

A question arose during the Committee's consideration of H.R. 200 as to its effect on the Nicholson Act (46 U.S.C. 251-252). The Nicholson Act prohibits, except as permitted by treaty or convention, a foreign-flag vessel, whether documented as a cargo vessel or otherwise, from landing in a port of the United States its catch of fish, etc.

The Treasury Department, in interpreting the Nicholson Act, has determined that a foreign-flag vessel is not prohibited from landing in America Samoa, as well as in Guam, its catch of fish or fish processed taken on board such vessel on the high seas from a vessel engaged in fishing operations or in the processing of fish or fish products.

Consequently, neither American Samoa nor Guam themselves nor any port or place in them are a "part of the United States" within the meaning of the Nicholson Act.

The Committee would like to make it clear that nothing in this Act would, or is intended to, affect that Act, and in particular, the Treasury Department's interpretation of that Act.

Also, it should be further noted that since the Trust Territory of the Pacific Islands is operated by the United States pursuant to the terms of a trusteeship agreement with the United Nations and is not considered to be a possession of the United States, it is not included within the coverage of this Act.

TITLE I—ESTABLISHMENT OF UNITED STATES FISHERIES CONSERVATION AND MANAGEMENT ZONE EXTENDING TO THE 200-MILE LIMIT

SECTION 101—ESTABLISHMENT OF FISHERIES CONSERVATION AND MANAGEMENT ZONE

Section 101 would define the breadth of the fisheries conservation and management zone by reference to the baseline, from which the breadth of the territorial sea is measured. The seaward boundary of the zone would be a line drawn so that each point thereon is 200 nautical miles from the baseline. Since the zone is contiguous to the territorial sea it is in fact 197 nautical miles in breadth. This method of measuring the breadth of the fisheries zone differs from that employed in the 1966 Act establishing the existing 9-mile contiguous zone. The 1966 Act defined both the inner and seaward boundaries of the zone so that the seaward boundary was established by reference to the inner boundary. Under that system of measurement, an extension of the breadth of the territorial sea would automatically extend the outer boundary of the fisheries zone by an equivalent distance.

It now appears reasonably certain that as a treaty emerges from the Third United Nations Conference on the Law of the Sea, coastal state jurisdiction of fishery resources at least, will be fixed at 200 nautical miles. At the same time, it appears likely that territorial seas will be fixed at 12 nautical miles. Under the system of measurement established in this Act, the territorial sea may be expanded to 12 miles without disturbing the 200 nautical mile seaward boundary of the fisheries conservation and management zone. Any extension of the territorial sea will automatically contract the breadth of the zone by by an equivalent distance, obviating the need for any amendment to this Act to maintain the outer boundary of such zone at 200 nautical miles.

SECTION 102—EXCLUSIVE RIGHTS OF UNITED STATES WITHIN ZONE

The first sentence of this section would simply restate existing law. The United States will exercise with respect to fisheries the same jurisdiction that it exercises in the territorial sea. The zone established by this Act differs from the zone established by the Act of 1966 only with respect to its dimensions. The second sentence of section 102 would make it clear that the recognition of foreign fishing rights upon the effective date of this title, will be governed exclusively by the provisions of this Act. In this connection, it should be noted that section 402 of this Act would amend the Act of May 20, 1964, the so-called Bartlett Act, to eliminate from that Act the procedures formerly set out for the granting of foreign fishing rights within the territorial sea or the present 9-mile contiguous zone. The authority of the Bartlett Act to permit fishery research is the sole exception to section 102 that was carried forward. This exception would permit foreign fishing by international organizations for research pursuant to this Act.

SECTION 103—ADJUSTMENT OF BOUNDARY

This provision is identical to language appearing in the 1966 Act authorizing the President to adjust the boundary of the zone where it conflicts with that of other nations. This authority would permit the President to establish by Proclamation the boundary of the zone between the United States on the one hand and Canada, Mexico, Cuba and other Caribbean nations, and the Soviet Union. It is expected that the Secretary of State on behalf of the President will promptly undertake negotiations with these nations to arrive at equitable boundary agreements.

SECTION 104—STATE JURISDICTION

This provision is intended to make it crystal clear that this Act does not prejudice any claim of any State to natural resources beyond the territorial sea of the United States. At the same time, the Act is not intended to diminish State jurisdiction or to authorize any federal encroachment over the management or control of any natural resources within any internal waters of any State. There is no authority in the Act for a fishery management plan to regulate the taking of fishery resources in the internal waters of the States. With respect to the territorial sea, however, section 104 would authorize an exception pursuant

to section 309. Fisheries management plans may, under very limited circumstances set forth in section 309, regulate fishing within the territorial sea and supersede State regulations applicable to the territorial sea.

SECTION 105—REPEALER

This section would repeal the Act of October 14, 1966, which established the 9-mile contiguous zone.

SECTION 106—EFFECTIVE DATE

This section would provide that title I shall take effect July 1, 1976, therefore, the present 9-mile contiguous zone would remain in effect until that date.

In this regard, it should be noted that since title I of the Act does not take effect until July 1, 1976, the provisions of section 201 would not be operative until that date. It is, however, incumbent upon the Secretaries of Commerce, Transportation, the Coast Guard, and the Secretary of State to begin immediately to prepare for the full implementation of section 201 since there is no authority for continued fishing by foreign vessels after July 1, 1976, except pursuant to the procedures set forth in section 201. Of course, treaties governing fishing within the extended fisheries zone would be honored subject to the renegotiation provisions of section 202(b). Also, other international fisheries agreements would be honored, but such agreements could not be extended or renewed except pursuant to this Act.

Any bilateral fisheries agreement that might be entered into after the date of enactment of the Act and any amendment entered into after such date to any international fishery agreement entered into before such date would be subject to the disapproval provisions of section 206. Given the relatively short time remaining to July 1, 1976, it is expected that the Secretary of State will use great discretion and restraint in the execution of bilateral fisheries agreements which might tend to delay or impede the full effectiveness of the extension of the fisheries zone to 200 miles.

The provisions of title III of the Act setting forth the management procedures and providing for the establishment of Regional Marine Fisheries Councils would become effective on the date of enactment of this Act and it is the Committee's profound hope that these Councils will be fully operative by July 1, 1976.

TITLE II—INTERNATIONAL FISHERIES AGREEMENTS

SECTION 201—FISHING BY FOREIGN VESSELS IN THE FISHERIES ZONE AND SEAWARD OF THE ZONE FOR MANAGED ANADROMOUS SPECIES

(a) *Permits Required of Foreign Vessels.*—Subsection (a) would make it clear that no foreign fishing vessel could engage in fishing within the 200-mile fisheries zone of the United States or seaward of the zone for anadromous species managed pursuant to a plan implemented under this Act unless such vessel has on board a valid permit issued by the Secretary.

(b) *Application for Permits.*—Subsection (b) would set forth the procedure to be followed and the information to be contained in the application by a foreign nation seeking a fishing permit on behalf of

vessels registered under its flag. The application for such a permit would be required to be filed with the Secretary of State.

(c) *Transmission of Application for Action.*—Subsection (c) would require the Secretary of State, upon receipt of an application for a permit by a foreign nation, to promptly transmit such application, together with his comments and recommendations, to the Secretary. Also, he would be required to submit a copy of the application to the Secretary of the department in which the Coast Guard is operating.

Naturally, the Committee would expect the Secretary, in turn, to immediately transmit a copy of each application to the appropriate regional marine fisheries council and seek the views and recommendations of such council on the application.

(d) *Tentative Approval of Application and Preparation of Statement of Conditions and Restrictions.*—In determining whether or not to approve an application, subsection (d) would require the Secretary, upon receipt of the application, to consult with the Coast Guard, with respect to enforcement, and to consider the views and recommendations of the Secretary of State and the appropriate regional marine fisheries council before making his decision. If the Secretary determines that the fishing activity proposed in the application is consistent with the policy and purposes of this Act and with the fisheries management standards set forth in section 302(c), and after taking into account traditional or historical fishing, if any, by the applicant nation for the species involved, the Secretary would tentatively approve the application. However, should the application involve a species for which a fishery management plan is being developed, tentative approval could be given only if the species involved is not depleted.

Once the application has been tentatively approved, the Secretary would be required to prepare a statement of the conditions and restrictions which would apply to the fishing in which the foreign vessels proposes to engage and to which the foreign country must agree before any permit could be issued.

Also, subsection (d) would enumerate certain conditions and restrictions that must be included and become a part of any permit issued. Among those conditions and restrictions are the following: provision for adjustment in the number of fishing vessels for which permits may be issued; the requirements imposed by any fishery management plan, if the application involves a managed species; if the application involves other than a managed species, such conditions and restrictions deemed appropriate with respect to tonnage, catch, gear requirements, statistical reporting, etc.; enforcement conditions, including but not limited to display of the permit in the wheelhouse of the vessel, surrender of the permit to any authorized officer boarding and inspecting the vessel, requirements for on-board observers and reimbursement to the United States for the cost of such observers, and the prepayment of any license fees which may be levied in the case of a managed species; and, if in the case of a species (not depleted) for which a management plan is being developed, the provisional application of the conditions and restrictions of this subsection with the understanding that the Secretary could amend the permit to conform such conditions and restrictions to the plan requirements.

(e) *Special Considerations in Case of Application To Fish for Species for Which Fishery Management Plan Is Being Developed.*—Under this subsection, the Secretary could tentatively approve an application for

fishing by foreign vessels for a species with respect to which a fishery management plan is developed but only if the Secretary determines that the species is not depleted.

(f) *Congressional Action on Application.*—Subsection (f) would make it clear that each application tentatively approved by the Secretary, together with the attached conditions and restrictions, would be deemed to be an international fisheries agreement to which Congressional review and possible disapproval of such application would be applicable as provided by section 206.

(g) *Issuance of Permits.*—After the 60 day waiting period required by section 206, if neither the House nor the Senate disapproves a tentatively approved application, the Secretary of State would be required to transmit to the foreign nation concerned a statement of the conditions and restrictions prepared by the Secretary to be attached to such application. Upon acceptance of the application, together with the attached conditions and restrictions, the Secretary would be required to issue to the Secretary of State a permit for each fishing vessel covered by the application. In turn, the Secretary of State would transmit the permits to the foreign nation for distribution to the operators of such vessels. Naturally, passage of a resolution of disapproval by either House would nullify the application.

(h) *Suspension or Revocation of Permits.*—Subsection (h) would authorize the Secretary to suspend or revoke a permit if he finds that the vessel to which the permit was issued has been repeatedly used in the commission of acts in violation of the conditions or restrictions attached to such permit for which civil penalties are assessed.

In those situations in which a vessel is involved in such repeated violations, and there is no seizure of such vessel pursuant to such violations, and a civil penalty is assessed but is not paid within a reasonable time, the Secretary would be required to suspend the permit issued to that particular vessel until such time as the assessment is paid.

This subsection would also make it clear that any fishing by a foreign vessel in the fisheries zone or seaward of the zone for a managed species (anadromous) during the period of revocation or suspension of its license would be deemed to be a violation of the Bartlett Act, thereby making such vessel subject to the stiffer penalties of that Act.

(i) *Issuance of Warnings.*—This subsection would authorize an enforcement officer, in lieu of citing the vessel for a formal violation for which a penalty could be imposed, to issue a warning to the master of such vessel for violating the conditions or restrictions of a permit when he deems such violations to be minor in nature. Any warning issued would be required to be noted in writing on the permit.

The Committee envisions enforcement officers in situations of this nature as functioning similar to traffic officers when issuing warnings for minor traffic violations. Naturally, the Committee expects the enforcement officer to take into consideration the number of warnings, if any, noted on a particular permit when making his decision as to whether to cite the master of the vessel for a violation under section 310(2) or to issue a warning to the master of such vessel.

(j) *Application and Permit Forms.*—This subsection would require the Secretary, after consultation with the Secretary of State and the Secretary of the Department in which the Coast Guard is operating, to prescribe appropriate application and permit forms to be used pursuant to this Act.

It is to be noted that the permit form would have to be large enough to provide for the inclusion of such information as may be necessary to adequately inform enforcement officers of the conditions and restrictions attached to the permit which apply to the vessel.

(k) *Special Treatment for Fishery Management Plans Which Apply Seaward of the Fisheries Zone to Anadromous Species.*—(1) *Plans deemed unilateral conservation measures.*—This subsection would provide that any fishery management plan prepared by a regional marine fisheries council or the Secretary which applies to any anadromous species seaward of the fisheries zone would be deemed to be a unilateral measure of conservation on the part of the United States within the meaning of Article 7 of the Convention on Fishing and Conservation of the Living Resources of the High Seas (hereinafter referred to in this report as the Convention).

It is to be noted that this Convention has been ratified by 33 countries, including the United States. It imposes on all contracting Governments the duty to adopt, or to cooperate with other contracting Governments in adopting, such measures for their respective nations as may be necessary to conserve high seas fisheries resources. The Convention also allows a coastal nation to assert a special interest in the productivity of those living resources which may be found on the high seas adjacent to its territorial sea, and requires other contracting Governments to recognize this special interest. In addition, Article 7 of the Convention allows a coastal nation to unilaterally adopt conservation measures on stocks of fish in any area adjacent to its territorial sea, provided negotiations to secure an agreement with other nations to abide by such measures have not led to an agreement within six months, and provided further, that there is a need for urgent application of conservation measures based on scientific findings, and that the regulatory measures are not discriminatory.

(2) *Suspension of taking effect of plan.*—Paragraph (2) of this subsection would make it clear that the regulations promulgated to implement the fishery management plan, to the extent it would apply to anadromous species seaward of the fisheries zone, would not come into force and effect until the close of the six-month period following the date of the promulgation of such regulations. During such six-month period, the Secretary of State would be required to try to obtain agreements from other countries signatory to the Convention—as well as nonsignatory countries—that would require the vessels of such countries to comply with the plan and implementing regulations.

(3) *Entering into force and effect of plan.*—Paragraph (3) of this subsection would provide that after the close of the six-month period, the fishery management plan, to the extent it applies seaward of the fisheries zone, and the implementing regulations would have force and effect within the area seaward of the fisheries zone to which it applies.

(4) *Suspension of enforcement by the United States of plan seaward of the fisheries zone.*—Paragraph 4 of this subsection would make it possible for foreign nations to police its own vessels. In this regard, if permits are issued by the Secretary to fishing vessels of any foreign nation which authorizes them to engage in fishing for any anadromous species to which a management plan applies seaward of the fisheries

zone, the United States would refrain from enforcing the conditions and restrictions imposed with respect to such permits if the foreign nation concerned gives written assurance to the Secretary of State that it will regulate such vessels in accordance with such conditions and restrictions.

However, two conditions must be met before such country can police its own vessels: the Secretary of State must find that the penalties imposed by that country against its vessels are equivalent to the civil penalties imposed by the United States under section 311 for violation of any condition or restriction applicable to a permit and that such nation stringently assesses such penalties against its vessels or nationals which violate such conditions or restrictions.

It is to be noted that this self-policing provision is applicable only so long as these requirements are fulfilled. Once the Secretary of State determines that such country no longer meets these conditions, then such authority lapses and the vessels of such nation would become subject to the penalties of this Act or the Bartlett Act, as the case may be.

(l) *Continental Shelf Species.*—This subsection would make it clear that nothing in this Act, except as provided by title IV, shall be construed to extend to any foreign vessel the right or privilege to engage in fishing for any Continental Shelf species. However, in rewriting section 1 of the Bartlett Act, title IV would retain the language of that Act that allows foreign vessels owned or operated by an international organization, of which the United States is a party, to engage in fishery research for Continental Shelf fisheries resources.

The Committee is not aware of this privilege ever having been extended since the inception of the Bartlett Act, some ten years ago. Consequently, except under most rare circumstances, Continental Shelf species will not be allowed to be taken by foreign vessels.

SECTION 202—TREATMENT OF CERTAIN EXISTING INTERNATIONAL FISHERIES AGREEMENTS

(a) *Application of Act to Existing Agreements.*—Subsection (a) would make it clear that any international fisheries agreement (except a fisheries treaty) which is in effect on July 1, 1976, and which pertains to fishing within the fisheries zone or to species or stocks of fish or fisheries with respect to which the United States may exercise management and authority under this Act could not be extended or renewed except pursuant to this Act.

This subsection would primarily affect the bilateral fisheries agreements now in force and effect with such countries as Japan, Russia, and Poland as they relate to fishing for certain species of fish in the existing 12-mile fisheries zone.

(b) *Renegotiation of Treaties.*—This subsection would require the Secretary of State, in consultation with the Secretary and the Secretary of the Department in which the Coast Guard is operating, immediately after the date of the enactment of this Act to take the appropriate steps to renegotiate all treaties (within the meaning of section 2 of Article II of the Constitution) which pertain to fishing within the fisheries zone or which pertain to species, stocks of fish, or fisheries with respect to which the United States may exercise

management and conservation authority under this Act. The renegotiations would be designed to conform such treaties to the provisions and requirements of this Act.

It is to be noted that section 2 of Article II of the Constitution gives to the President the power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur. There are a number of treaties which would be affected by this subsection, two of the more important are as follows: the International Convention for the Northwest Atlantic Fisheries and the International Convention for the High Seas Fisheries of the North Pacific Ocean.

(c) *Reports to Congress.*—This subsection would require the Secretary of State to submit to the Congress a written report on or before May 15, 1976, and annually thereafter, on the results of the negotiations pertaining to the treaties covered by subsection (b).

The Committee selected the date of May 15, 1976, for the first report on the results of the renegotiations since the new 200-mile fisheries zone would come into force and effect on July 1, 1976. The Committee is most hopeful that the Secretary of State will act promptly and with vigor in renegotiating these agreements with the countries concerned so that the fisheries involved can receive the protection to which they are entitled.

SECTION 203—NEGOTIATIONS TO PRESERVE CERTAIN UNITED STATES FOREIGN FISHING RIGHTS

(a) *Commencement of Negotiations.*—Subsection (a) would require the Secretary of State, within 90 days after the date of enactment of this Act, to commence negotiations with each foreign nation off of whose shores United States vessels are engaged in fishing for specific stocks of fish within 200 miles of the coast of such nation. The purpose of such negotiations would be to obtain fishery agreements with such nations that would allow United States vessels to continue fishing for such stocks of fish in the 200-mile zone of such nations.

For example, it is to be noted that a number of United States vessels have been and are engaged in fishing for shrimp off the coast of Brazil and Mexico. The Secretary of State would be expected to make every effort to see that these vessels are allowed to continue fishing for shrimp in such waters off the coast of these nations. Naturally, this subsection would apply to any stock of fish United States vessels are engaged in fishing off foreign shores at the time this Act comes into force and effect.

(b) *Action if Foreign Nation Refuses To Negotiate or Violates Treaty.*—Subsection (b) would set forth the procedures to be followed in case a foreign nation off of whose shores United States Vessels are fishing for certain stocks of fish refuses to cooperate in allowing this fishery to continue. In this regard, if the Secretary of State determines that any such foreign nation is refusing to commence negotiations or fails to negotiate in good faith or, although an agreement is in force and effect, the foreign nation is not complying with its obligations under the agreement, then the Secretary of State would be required to certify this determination to the Secretary of the Treasury. Upon receipt of any such certification, the Secretary of the Treasury would be required immediately to take appropriate action to prohibit the importation

into the Customs territory of the United States of any seafood products of that foreign nation.

It is to be noted that this subsection also would immediately trigger the certification that would be required to be made by the Secretary of the State to the Secretary of the Treasury whenever there is a seizure of a United States fishing vessel which is reimbursable under section 3 of the Fishermen's Protective Act by any foreign nation off whose coast United States vessels are engaged in fishing for specific stocks of fish. Such a certification would consequently trigger the import prohibition of any seafood product from the foreign nation concerned.

(c) *Duration of Import Prohibition.*—This subsection would require any import prohibition which is imposed to remain in effect until the Secretary of State certifies to the Secretary of the Treasury that (1) an agreement has been reached, in the case of a foreign nation refusing to commence negotiations or fails to negotiate in good faith, or (2) such foreign nation is complying with its obligations, in the case where an agreement with such nation was in effect.

(d) *Definition.*—This subsection would define the term "seafood product" to mean any fish or any article which is composed in whole or in part of any fish which are products of such nation. However, to be excluded during the term of any import prohibition would be any such fish or article if the fish or the fish constituting the article are harvested by United States vessels, irrespective of point of harvesting or offloading. In other words, if harvested by United States vessels such fish or fish constituting the article would not be considered to be a seafood product of the nation affected by the import prohibition.

SECTION 204—NEGOTIATIONS REGARDING HIGHLY MIGRATORY SPECIES

This section would require the Secretary of State, upon the request of, and in cooperation with, the Secretary to initiate negotiations with any foreign nation participating in a fishery for any highly migratory species for the purpose of entering into international agreements that would establish an international body having authority to manage and conserve such highly migratory species.

In this regard, there are two international conventions now in force and effect which are designed to manage and conserve highly migratory species. They are the Convention for the Establishment of an Inter-American Tropical Tuna Commission (IATTC) and the International Convention on the Conservation of Atlantic Tunas (ICCAT).

IATTC member countries are Costa Rica, United States, Mexico, Panama, Canada, Japan, and France. The species covered by this Convention are yellowfin and skipjack tuna and tuna bait fishes in the Eastern Pacific Ocean area. ICCAT member countries are Japan, Canada, United States, Brazil, France, Portugal, Spain, Morocco, Ghana, Republic of South Africa, Korea, Senegal, Cuba, and the Ivory Coast. The species covered by this Convention are tuna and tuna-like species in all waters of the Atlantic Ocean.

Testimony received at the Committee hearings indicated that in particular IATTC has not been as effective as it should have been. Enforcement has been a major problem. Traditionally, international fishery agreements provide for the enforcement of each Convention

by each signatory nation as to their own citizens. Another chronic problem has been the fishing of managed species by nations not signatory to the Convention.

Nevertheless, since IATTC and ICCAT are already in existence, the Committee is most hopeful that the Secretary of State can build on this framework and will be successful in obtaining an agreement with all nations whose vessels fish for these highly migratory species to become signatories to such Conventions and to require their citizens to comply with the regulations of these Conventions.

SECTION 205—MUTILATERAL CONVENTION

This section would provide for the advance authority for the promulgation of regulations by the Secretary to conform the regulations issued pursuant to this Act to the fisheries provisions of any convention that may grow out of the United Nations Conference on the Law of the Sea once it has been ratified by the United States. In promulgating such regulations, the Secretary would be required to follow the regular procedure called for in section 307.

SECTION 206—CONGRESSIONAL DISAPPROVAL OF CERTAIN INTERNATIONAL FISHERIES AGREEMENTS

Congressional action with respect to international fishery problems has been extensive during the past decade beginning with the Act of May 20, 1964, the Bartlett Act, which established the prohibition against foreign fishing in the territorial sea and in waters in which the United States maintains the same fishery jurisdiction as it has in its territorial sea. This basic protection of American fisheries was followed in 1966 by the enactment into law of the nine-mile contiguous fisheries zone (Public Law 89-658).

The establishment of a twelve-mile belt of protected ocean waters and the equally important steps taken in the Fishermen's Protective Act of 1967 to give the modicum of United States support to American fishermen illegally seized off the shores of other nations marked the beginning of intense Congressional effort to convince the Department of State and successive Administrations that a vital national resource, our fisheries and our fishing industry, are in grave danger. Each of these many steps has been resisted or, wherever possible, frustrated.

Increased Congressional efforts were in response to a massive increase in the level of foreign fishing off our shores by nations such as the Soviet Union, which has had no historic presence in American waters and whose fishing techniques were utterly destructive of the resources which the United States had naively considered inexhaustible.

The response of the United States government to the crisis of the past decade has been embodied in a growing number of bilateral fisheries agreements. The pattern of these agreements has been along the following lines. Nation A, which has not previously fished in American coastal waters, begins to send significant numbers of fishing vessels to our coastal shores. This fishing effort may be directed at species which American fishermen are not primarily engaged in taking, but the stocks upon which American fishermen rely cannot be avoided by the foreign vessels. After several years of ever-increasing

fishing effort and after the American fishermen begin to experience a serious decline in their catch, the State Department undertakes negotiations for an agreement whereby Nation A will refrain from fishing in designated waters beyond the exclusive fisheries zone of the United States during particular seasons which are of the greatest importance to the American fisherman. In return for such enlightened behavior by the fishing vessels of Nation A, which are in most cases state-owned and operated, the United States grants work privileges and a variety of other concessions to the foreign vessels. In no case, however, does Nation A desist from fishing in American coastal waters nor does it allow American inspectors on board its vessels to regularly monitor their activities without advance notice.

These bilateral agreements have many variations, but the theme is always the same—*quid pro quo*. There is no recognition that the fishery resources are exhaustible, or that they should not be exploited to the point of total destruction, except in return for concessions from the United States that will render the foreign fishing effort more efficient and profitable in the long run, such as the right to re-supply in American ports rather than make the long voyage home or maintain greatly increased supply forces at sea.

The role of the American fisherman during these bilateral negotiations, vital as they are to his welfare, has been effectively limited to that of observer and unofficial advisor to the State Department negotiators.

The role of Congress has been limited, by reason of the decision not to submit such agreement to the ratification process, to one of oversight. Such oversight is invariably after the fact and in a climate which is not conducive to a meaningful probate of what should have been accomplished in the negotiations versus what was actually agreed to in order to insure that our fishery resources receive maximum protection. All too often in the many oversight hearings, which have been held during the past decade, the negotiators stock position has been, in effect, "This was the best deal we could get under the circumstances."

The state of our fisheries today clearly demonstrates that the best was frequently not good enough. It is also clear that most of these agreements could not have withstood the ratification process had the constitutional route been followed.

It is for these briefly described reasons that there is an overwhelming need to insure that the utterly bankrupt negotiating procedures of the past decade are not repeated after enactment of this Act. No longer will it be necessary for the United States to go, hat in hand, to foreign capitals to give concessions in return for minimal recognition of conservation principles by the many foreign nations now fishing off our shores.

The procedures set forth in section 201 will insure that foreign fishing will be conducted on a basis which places conservation of the resources at the center of all considerations. Those who do not choose to adhere to these principles simply need not apply for the privilege of fishing off our shores. Those who agree to be bound by United States conservation practices can be assured of fair treatment and access to resources which will help to feed their people for years to come.

The procedures contained in section 206 would recognize that the agreements which will be entered into under Section 201 should not

have the status of treaties, thus continuing a precedent well established by the State Department. At the same time, these procedures recognize that the oversight role of Congress cannot be effectively undertaken unless there is adequate review and deliberation before these agreements become a reality.

Given the clearcut and uniform requirements embodied in section 201, which will govern all agreements authorizing foreign fishing, it is unlikely that either House of Congress will be compelled to disapprove an agreement. Section 206 would simply guarantee that requirements of section 201 will be religiously followed in the future.

Section 206(a) would provide that any international fishery agreement other than a treaty, would take effect sixty days after submission to both Houses of Congress, provided neither House adopts a resolution of disapproval.

The requirements of section 206(a) would apply to amendments to any existing bilateral agreement, virtually all of which will expire by their terms before July 1, 1976, and to all section 201 applications for foreign fishing privileges. It is expected that the executive branch will use great discretion in extending any bilateral agreement which will not conform to the requirements of section 201 during the period prior to July 1, 1976.

Section 206(b) would define the resolution of disapproval, and section 206(c) would set forth the mechanism for consideration of such a resolution in the House of Representatives and the Senate as an exercise of their rule-making powers.

Section 206 is patterned after numerous provisions of the Trade Act of 1974 (Public Law 93-618). In particular, section 152 of that Act sets forth basic procedural steps to be followed in implementing other substantive provisions of that Act.

The procedure for disapproval by either House of Congress is embodied in section 407(c) (2) and (3) with respect to the extension of non-discriminatory treatment to the products of certain nations and with respect to trade with nonmarket economy countries.

Other sections of the Trade Act provide for disapproval by both Houses of Congress or for approval by both Houses of certain executive decisions or actions. It is believed, however, that the procedure for disapproval by either House is most appropriate to this Act, the Marine Fisheries Conservation Act of 1975, given the history of bilateral negotiations that have occurred during the past decade.

The Foreign Assistance Act of 1974 (P.L. 93-559) also contains provisions for Congressional disapproval of certain Presidential actions. These include Section 42, which amends the Foreign Assistance Act of 1961 with respect to the Special Requirements Fund, and Section 45, which amends the Foreign Military Sales Act with respect to sales involving more than \$25 million.

The procedures set forth in Section 206 of this Act are therefore consistent with review processes already well established with respect to actions of the executive branch in critical areas of international activity. They are most appropriate to this legislation, since it deals with utilization of natural resources over which the United States will assume total responsibility and control.

TITLE III—MANAGEMENT OF THE SPECIES

SECTION 301—UNITED STATES JURISDICTION OVER CERTAIN FISHERIES

(a) *In General.*—Subsection (a) would clearly describe those species or categories of fish over which the United States will exercise management responsibility and authority under this Act. In general, they would include all species of fish except highly migratory species. In particular, the Act would cover all coastal, anadromous, and continental shelf species as defined in section 3 of this Act.

(b) *International Regulation of Highly Migratory Species.*—This subsection would make it clear that this Act does not cover highly migratory species, such as tuna, and that the United States does not recognize the right of any foreign country to extend its rights, claims or jurisdiction to such species. As pointed out in section 2 of this Act, it is the policy of the United States to encourage international measures for the conservation and management of highly migratory species. Furthermore, consistent with this policy, subsection (b) would reiterate the United States position that it will not recognize any management of such species except pursuant to international fishery agreements established for such purposes.

SECTION 302—FISHERIES MANAGEMENT RESPONSIBILITIES OF THE SECRETARY

(a) *In General.*—This subsection would require the Secretary to manage all fisheries over which the United States has fishery management responsibility and authority (coastal, anadromous, and Continental Shelf species) pursuant to the provisions of this Act. The proper management of any such fishery would result in the regulation of fishing by both foreign and domestic vessels as may be deemed necessary to carry out the policy and purposes of this Act.

In carrying out such management functions, the Committee expects the Councils, to the maximum extent possible, to be utilized by the Secretary.

(b) *Management Pursuant to Management Plan.*—This subsection would merely provide that no fishery, for which management authority is provided under section 301(a), could be managed by the Secretary except pursuant to a management plan which is prepared by the Council pursuant to section 304, except as provided in section 305(d) or 308. Section 305(d) would allow the Secretary to prepare his own management plan for a particular fishery when the Council concerned fails to prepare such a plan within a reasonable time after requested by the Secretary to do so or if the Secretary disapproves of an amended plan submitted by the Council. Section 308 would require the Secretary—within 90 days after this Act comes into effect—to prepare a plan with respect to depleted stocks of coastal or Continental Shelf species.

(c) *National Fisheries Management Standards.*—This subsection would require any fisheries managed pursuant to this Act to be consistent with certain national fisheries management standards. In general, the standards enumerated in this subsection would require management and conservation measures: (1) To be based upon the

best scientific biological information available; (2) to be nondiscriminatory between residents of different States; (3) to be designed to achieve the optimum sustainable yield of a stock of fish on a continuing basis; (4) to promote efficiency in harvesting techniques; (5) to result in reasonable administration or enforcement costs; and (6) to be designed to prevent depletion of fisheries resources.

With respect to the standard that requires such measures to be nondiscriminatory between residents of different States, the Committee would like to make it clear that this subparagraph would require the management plan to provide for uniform and equal treatment of United States citizens and corporations operating or engaging in the fisheries concerned without regard to their particular residence or State of incorporation.

SECTION 303—REGIONAL MARINE FISHERIES COUNCILS

(a) *Establishment.*—This subsection would provide for the establishment of seven regional marine fisheries councils. The New England Council would include the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. The Mid-Atlantic Council would include the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia. The Southern Atlantic Council would include the States of North Carolina, South Carolina, Georgia, Florida, and the Commonwealth of Puerto Rico and the Virgin Islands. The Gulf Council would include the States of Texas, Louisiana, Mississippi, Alabama, Florida, and the Commonwealth of Puerto Rico and the Virgin Islands. The Pacific Council would include the State of California, Oregon, Washington, and Idaho. The Alaska Council would include the States of Alaska, Oregon, and Washington. The Western Pacific Council would include the State of Hawaii and American Samoa and Guam.

It is to be noted that a number of the States would be represented on more than one Council. For example, the Commonwealth of Puerto Rico and the Virgin Islands would be represented on both the Southern Atlantic Council and the Gulf Council. From a geographical standpoint, they should be represented on the Southern Atlantic Council. However, from a fisheries standpoint, they should also be represented on the Gulf Council since this Council will be considering and working with fisheries common to the States in the Gulf and the Commonwealth of Puerto Rico and the Virgin Islands.

With respect to the States of California and Oregon, they would be included on both the Pacific and Alaska Councils. Geographically speaking, they are rightfully included in the Pacific Council. However, because of the migratory habits and movements of anadromous species, many of which spawn in their waters and migrate to areas off the coast of Alaska, and because of the participation of their fishermen in this fishery off the coasts of Alaska, it was also deemed appropriate that they should have representation on the Alaska Council.

With respect to Florida, naturally it should be represented on two Councils since it borders on both the Atlantic and Gulf Coasts.

(b) *Membership of Councils.*—(1) *Number and appointment.*—Subsection (b) would provide for the make-up of each Council. In this regard, each Council would consist of the following:

(A) the Executive Director of the Marine Fisheries Commission for the geographical area concerned (there are in existence today the Atlantic, the Gulf, and the Pacific Marine Fisheries Commissions);

(B) one member appointed by, and serving at the pleasure of, the Governor or Chief Executive Officer of each State represented on the Council; in the case of the Alaska Council, the Governor of Alaska would be entitled to appoint three members; it was deemed appropriate that Alaska should be allowed to have three members appointed by the Governor in order that it might have a majority of such appointees since the States of California and Oregon would also be represented on that Council;

(C) the Regional Director of the National Marine Fisheries Service for the geographical area concerned;

(D) the Regional Director of the United States Fish and Wildlife Service for the geographical area concerned;

(E) six members appointed by the Secretary from a list prepared by the members specified in paragraph (A), (B), (C), and (D) of not less than 20 individuals having knowledge and experience in commercial or recreational fishing; such appointments would be required to reflect the degree to which commercial and recreational fishermen participate in the fisheries in the geographical area concerned and none of such appointees could be officers or employees of the Federal Government or of any State Government;

In determining the membership of the Councils representing the commercial and recreational fishing interests, the Committee expects consideration to be given to, among others, the degree to which each participates in the region's fisheries, the number of fishermen, vessels, shore-support employees, and the economic contribution of the various fisheries to the different regions.

(F) two members appointed by the Secretary from a list prepared by the members specified in paragraph (A), (B), (C), and (D) of not less than six individuals who would represent the public interest; none of these appointees could be officers or employees of the Federal Government or of any State Government nor could they be any of the individuals referred to in subparagraph (E).

The Committee expects that most Governors will choose the state official with marine fisheries management responsibility and expertise for the subparagraph (B) appointments.

The Committee would expect, among others, conservationists, ecologists, and representatives of the scientific community to be considered for the subparagraph (F) appointments.

(2) *Continuation of membership.*—This paragraph would provide for continuity of membership in the case of an appointee who leaves the office he is holding at the time of being appointed as (1) an Executive Director of one of the Marine Fisheries Commissions, (2) a Regional Director of the National Marine Fisheries Service, or (3) as a Regional Director of the United States Fish and Wildlife Service.

This paragraph would also cover those who are appointed to represent the commercial and recreational fishermen and the general public and subsequently become an officer or employee of the Federal Government or of a State Government. In such situations, the appointee would be allowed to continue as a member of such Council for a period of 90 days, as the case may be.

(3) *Terms.*—This paragraph would provide that all members appointed to represent the general public and the commercial or recreational fisherman would be required to be appointed for a term of three years. Of the members first appointed to represent the commercial or recreational fishermen, two would be required to be appointed for a term of one year, two for a term of two years, and two for a term of three years. Of the members first appointed to represent the general public, one would be required to be appointed for a term of two years and one for a term of three years.

Individuals appointed to represent the commercial or recreational fishermen and the general public would be eligible for reappointment. Members appointed by the Governor or Chief Executive Officer of a State would serve at the pleasure of such Governor or Chief Executive Officer. The Executive Directors of the Marine Fisheries Commissions and the Regional Directors would serve so long as they held those offices.

(c) *Pay and Travel Expenses.*—(1) *Per diem rate.*—This paragraph would authorize members of each Council, other than Federal or State officers or employees, to receive \$100 for each day (including traveltime) they are engaged in the business of the Council.

(2) *Travel expenses.*—This paragraph would authorize Council members to receive travel expenses, including per diem in lieu of subsistence, while away from their homes or regular places of business in the performance of Council business. This authorization is consistent with that of 5 U.S.C. 5703(b) which allows such expenses to persons employed intermittently in the Government.

(d) *Transaction of Business.*—This paragraph would establish the procedure to be followed when conducting Council business. In this regard, a majority of the members of any Council would constitute a quorum; a Chairman for each Council would be required to be elected from the members appointed to represent the interests of the commercial or recreational fishermen, the interest of the public and those appointed by the Governor or Chief Executive Officer to represent the interest of the State concerned; and each Council would be required to meet at the call of the Chairman or a majority of its members, but in any case, it would be required to meet at least one day during each calendar quarter.

(e) *Staff and Administration.*—The Secretary would be required to make available to each Council such staff, information, and personnel services as it may reasonably require to carry out its function. In this regard, the Committee anticipates the Councils will be extremely active in organizing and preparing, or assisting in preparing, fishery management plans. It expects the Secretary to make available to the Councils such staff and personnel services as may be necessary in order for the Councils to adequately carry out their functions under this Act.

To further assist in carrying out its functions, this subsection would require the Administrator of General Services, after consulting

with the Secretary, to provide each Council on a reimbursable basis such administrative support services as the Council may request. In this regard, the Committee expects each Council to request such administrative support services as it may deem necessary in order for it to adequately carry out its functions under this act. The Committee expects the Secretary to make the necessary arrangements to see that the Administrator of General Services satisfies those requests.

(4) *Statement of organization.*—This paragraph would merely require each Council, after consultation with the Secretary, to publish and make available to the public a statement of the organization, procedure, and practices of the Council.

(f) *Advisory Panels.*—Each Council would be authorized to establish advisory panels to assist it in carrying out its functions.

The Committee expects each Council to establish such advisory panels as it may deem necessary to assist it in carrying out its functions under this Act. The Committee expects industry planning panels and scientific and technical panels to be among those that would be established by the Councils.

(g) *Functions.*—(1) *In general.*—This subsection would require each Council to solicit and evaluate the comments and recommendations of all interested persons as to how best to carry out the policy and purposes of this Act. This should be done on a continuing basis both informally and by means of public hearings whenever practicable. In fact, for the purpose of obtaining first hand information from the fishermen concerned, both commercial and recreational, regarding the needs of a particular fishery or the problems confronting such fishery, the Committee encourages the holding of public hearings in the geographical area concerned.

In addition, this subsection would require each Council to initiate the development of a management plan and propose such to the Secretary for adoption whenever the Council determines that any fishery in its region needs to be managed. In order to determine the needs of the fisheries and to properly conserve and protect them, the Committee urges each Council to conduct a thorough review of all fisheries within its geographical area.

Also, this subsection would require each Council to submit a report on its activities to the Secretary within 30 days after the close of each calendar quarter.

(2) *Statements of disagreement.*—This subsection would authorize the members of any Council voting against any measure receiving a favorable vote of the Council to submit to the Secretary a statement setting forth the reasons for their objection to such action. The Committee is hopeful that when there is disagreement that the members concerned will see that the Secretary is made aware of their views and recommendations.

SECTION 304—PREPARATION OF FISHERY MANAGEMENT PLANS BY COUNCILS

(a) *Plans Prepared on Initiative of Council or at Request of Secretary.*—This subsection would authorize a fishery management plan, with respect to the species covered by this Act (coastal, anadromous, and Continental Shelf species), to be prepared by the appropriate Council

concerned on its own initiative or at the request of the Secretary. Any fishery management plan prepared pursuant to this subsection would be required to be limited to species in the fisheries zone adjacent to the States represented on the Council. In any case in which the range of the species would include waters adjacent to the States represented on more than one Council, the Secretary would be required to designate which Council would prepare the fishery management plan. When such a plan would include waters adjacent to the States represented on more than one Council, the Committee would expect the Council designated to prepare the plan to consult with the other Council concerned and to seek the views and recommendations of the State representatives on such Council with respect to the plan.

Naturally, the Committee expects the Councils through hearings or any other appropriate means to solicit the advice and recommendations of interested individuals as to the need or desirability of preparing a management plan with respect to any particular fishery.

(b) *Scope of Management Plans.*—(1) *In general.*—This paragraph would require any management plan prepared by any Council to contain such conservation and other measures which the Council deems appropriate with respect to the management of the species or the fishery concerned. In addition, the Council would be required to specify such conditions and limitations governing fishing by domestic or foreign vessels as the Council believes should be implemented to carry out such measures.

It is to be noted that with respect to foreign vessels, they would be prohibited from engaging in fishing within the territorial sea of the United States or for Continental Shelf species; however, research vessels owned or operated by an international organization, pursuant to a permit, would be allowed to fish in such waters or for such species.

(2) *Information with respect to relevant international obligations.*—This subsection would merely require the Secretary to provide to the Council, when such Council is preparing a fishery management plan, such information as may be appropriate with respect to international fisheries agreements and any other pertinent information relating to foreign fishing within the fisheries zone or seaward of the zone with respect to the fishery covered by the plan.

(3) *Specific plan requirements.*—This paragraph would describe in detail the specific requirements that could be imposed on a fishery for which the Council has prepared a management plan.

(A) The plan could designate zones where, and designate periods when, fishing would be limited, not permitted at all, or permitted only by certain types of vessels and gear.

(B) The plan could establish a system under which access to the fishery would be limited both as to foreign and domestic vessels and both as to recreational and commercial fishermen. If the system provided for limited entry, then consideration would be required to be given by the Council to such things as the present participation in the fishery concerned, historical fishing practices, value of existing investments in vessels and gear, capability of existing vessels to engage in other fisheries and the history of compliance with any fisheries regulations imposed pursuant to this Act.

Also, it should be noted that the plan, with respect to any foreign vessel, should include such conditions and restrictions as may be

necessary to comply with the policy and purposes set forth in section 2(b)(5).

(C) The plan could establish limitations on the catch of fish based on such things as area, species, size, number, weight, sex, incidental catch, total biomass, and other relevant factors necessary to carry out the policy and purposes of this Act.

(D) The plan could prohibit, limit, condition, or require the use of specified types of fishing gear, vessels, or other equipment or devices for such vessels which may be required to facilitate the enforcement of the provisions of this Act.

(E) The plan could specify those licenses, permits, or fees which should be required as a condition to engaging in any fishery regulated by this Act. In this regard, such licenses, permits, or fees could vary between domestic and foreign fishermen, between different categories of domestic fishermen (both recreational and commercial fishermen), and between different categories of foreign fishermen.

(F) The plan could require the submission to the Secretary of pertinent statistics such as the type of gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing and number of hauls.

(G) The plan could require such other requirements as the Council deems appropriate.

(4) *Confidentiality of statistics.*—In order to obtain accurate information that would be useful to the Council and the public in general, and in order to protect the business of the person supplying such information, this paragraph would require the Secretary to treat all statistics supplied to him pursuant to paragraph (3)(F) as confidential. The Secretary could make public such information provided he did not directly, or indirectly, disclose the identity or business of the persons supplying such statistics.

(5) *Proposed regulations.*—This paragraph would authorize any Council to propose to the Secretary regulations as it deems necessary and appropriate to carry out any fishery management plan prepared by it. The Secretary would be required to take such regulations into account when developing proposed regulations to be promulgated pursuant to a plan that has been adopted by him.

The Committee would like to encourage to the maximum extent possible Council participation in the development of proposed regulations which involve a fishery with which it is concerned.

SECTION 305—REVIEW, ADOPTION, OR OTHER ACTION BY SECRETARY REGARDING FISHERY MANAGEMENT PLANS

(a) *Action by Secretary After Receipt of Plan.*—This subsection would require the Secretary, within 60 days after receipt of a fishery management plan prepared by any Council, to review such plan in accordance with the requirements set forth in subsection (c). Once he has reviewed the plan, the Secretary would be required to notify in writing the Council submitting such plan of his approval, partial disapproval, or disapproval of the plan. In the case of partial disapproval or disapproval, he would be required to set forth his objections to such plan and the reasons therefore, and request the Council to amend the plan within 45 days.

(b) *Amended Plan.*—Within 30 days after receipt of an amended plan by the Secretary, the Secretary would be required to again review the plan and notify the Council in writing of his approval or disapproval and, in the case of disapproval, his reasons therefore.

(c) *Review of Plans.*—This subsection would set forth the matters to be considered when the Secretary reviews any management plan presented to him by any Council for approval. In carrying out the review, the Secretary would be required, among other things, to consider existing and projected population levels of the fish involved; to consider existing fishery management programs, statistics, and data relating to such fish; and to consult with the Secretary of State, if the plan will apply to foreign vessels, with the Coast Guard, if the plan will involve enforcement at sea, and with other Federal agencies, commercial and recreational fishery industries, and to the extent practicable, any other persons who may have an interest in the fisheries involved in such plan.

In addition, the Secretary would be required to determine whether the plan is consistent with the national fisheries management standards set forth in section 302(c). Also, he would be required to examine and evaluate the management procedures proposed in such plan in order to determine if the regulation of the fishery concerned in the fisheries zone will be consistent on an interstate basis and consistent with any management procedures which an affected State may have put in effect in the territorial sea of the United States.

After the Secretary has completed his review, then he would be required to notify the Council, as provided in subsection (c), of his approval, partial disapproval, or disapproval of such plan.

(d) *Preparation of Plans by Secretary.*—This subsection would require the Secretary to prepare a fishery management plan if any Council fails to prepare such a plan within a reasonable time after he has requested a Council to do so. Should the Secretary disapprove of an amended plan that has been presented to him for adoption, then, if he deems such plan to be needed in order to conserve and protect the fishery concerned, he shall proceed to prepare a plan for such fishery. When preparing such plan, he would be required to comply with the same requirements set forth in section 304(b) that a Council is required to comply with when preparing a plan.

The Committee would like to make it clear that the final decision as to whether a plan is needed or whether a plan will enter into force and effect rests with the Secretary. However, the Committee expects that, in most cases, after a plan has been thoroughly considered by a Council and there appears to be justification for such a plan, the Secretary will adopt the plan and proceed to promulgate appropriate regulations. The Committee encourages origination of fishery management plans at the Council level.

SECTION 306—LICENSE FEES

(a) *Definition.*—This subsection would define the term "license fee" to mean any fee which is to be imposed on any person under any fishery management plan for the privilege of fishing.

It is to be noted that no license fee will be imposed unless the plan specifically provides for such a fee to be imposed. It is expected that any plan that calls for the imposition of such a fee will establish the

amount of the fee to be charged as well as the persons to be charged, whether they be foreign or domestic fishermen or commercial or recreational fishermen.

Also, it should be noted that nothing in this Act would interfere with or affect the right of any State to impose license fees on its citizens for the privilege of fishing.

(b) *Collection by Secretary.*—This subsection would merely require all license fees imposed by any fishery management plan to be collected by the Secretary.

(c) *Credit of License Fees To Separate Treasury Account.*—This subsection would establish in the Treasury of the United States a separate account into which all license fees collected by the Secretary would be credited.

Paragraph (2) of this subsection would require 10 percent of all license fees collected from foreign fishermen to be earmarked for reimbursement of certain license fees that may be imposed on United States fishermen for fishing in certain waters off the coast of foreign nations, as provided in subsection (d).

Paragraph (3) of this subsection would require all license fees deposited in the separate account, other than the 10 percent of the foreign fees referred to in paragraph (2), to be used to carry out fishery research and development programs as provided in subsection (e).

(d) *Reimbursement of Certain Foreign Fees Imposed on United States Fishermen.*—(1) *Fees eligible for reimbursement.*—This paragraph would require the Secretary to reimburse any owner or operator of a United States fishing vessel for all or part of any license or permit fee (including any registration or equivalent fee) that may be imposed on such owner or operator by any foreign nation for the privilege of fishing in waters under the jurisdiction of that nation. However, two conditions would have to be met before such reimbursement could be made.

First, the United States would have to recognize the jurisdiction of that nation over fisheries conservation and management in such waters. In this regard, until July 1, 1976, the United States would recognize the fisheries jurisdiction of a nation out to 12 miles only off its shores; after July 1, 1976, the United States would recognize the fisheries jurisdiction of a nation out to 200 miles from its shores.

Second, United States vessels would have had to fish or carry out fisheries jurisdiction of a nation out to 200 miles off its shores.

(2) *Limitations on reimbursement.*—This paragraph would limit the amount such owners or operators of United States fishing vessels could be reimbursed. It would be an amount by which the fee imposed by the foreign nation exceeds the average license fee imposed under all fishery management plans implemented under this Act at the time such foreign fee was imposed. That is to say, the United States vessel owner or operator would not be reimbursed for the fee he would have been required to pay had his vessel been used in fishing in waters covered by a fishery management plan off the shores of the United States.

(3) *Reimbursement funding.*—This paragraph would require any reimbursement made by the Secretary to United States fishing vessel owners or operators to be made first out of the 10 percent fees collected from foreign fishermen. If such fees should prove to be insufficient, then the remainder would be paid out of appropriated funds.

In this regard, there would be authorized to be appropriated such sums as may be necessary to carry out the purposes of this subsection.

In view of the erratic nature in which seizures have occurred in the past, it was not possible to estimate the cost to the Federal Government of implementing this section of the act.

(e) *Fishery Research and Development.*—This subsection would require all license fees collected by the Secretary, excluding the 10 percent of the fees collected from foreign fishermen, to be used by the Secretary to carry out stock assessment and such other research and development which the Secretary deems appropriate with respect to the fishery resources within the geographical area of the Council from which the fees were derived. It is to be noted that fees could be collected only for managed species, the theory being that any fees collected should be used for the conservation, protection, and enhancement of such species. Therefore, the Committee would like to make it clear that any programs carried out by the Secretary pursuant to this subsection are expected to be in addition to, not in lieu of, any programs that would ordinarily be carried out by the Secretary.

SECTION 307—IMPLEMENTATION OF FISHERY MANAGEMENT PLANS

(a) *In General.*—This subsection would set forth the procedure to be followed by the Secretary after he has approved of any fishery management plan prepared by any Council or prepared by him. As soon as practicable after such approval, the Secretary would be required to publish in the Federal Register the plan and all regulations which he proposes to promulgate in order to implement the plan. Interested persons would be afforded a period of not less than 45 days after such publication within which to submit written data, views, or comments on the proposed regulations. After the expiration of the 45-day period, the Secretary could, after consideration of all relevant matters presented, proceed to promulgate the regulations with such modifications as he may deem appropriate, except as provided in subsection (b).

(b) *Objections to Proposed Regulations.*—This subsection would authorize, before the close of the 45-day period, any citizen (as defined in this subsection) who, or any State which, may be adversely affected by the plan or the proposed regulations to file with the Secretary written objections to the plan or proposed regulations stating the grounds therefore and request a hearing on such objections. Should the Secretary determine that the citizen filing objections would be adversely affected and such citizen has requested a hearing or if a State requests a hearing (whether it would be adversely affected by such regulations or not), then the Secretary would be required to schedule hearings as soon as practicable on such regulations, as provided under subsection (c), before proceeding to promulgate the regulations.

(c) *Hearings After Objections.*—This subsection would set forth the procedure to be followed should the Secretary decide to hold public hearings on the proposed regulations. In this regard, as soon as practicable after the close of the 45-day period, the Secretary would be required to publish in the Federal Register a notice specifying the time and place at which a public hearing would be held and the appropriate provisions of the regulations to which objections have been

filed. The hearing would be held pursuant to section 553 of the Administrative Procedure Act, and any interested citizen or State could be heard. After the hearing, the Secretary would be required to act upon such objections, make his determinations public, and promulgate the regulations with such modifications, if any, as he may deem appropriate.

With respect to any hearing to be held pursuant to this subsection, the Committee would expect such hearing to be held in a convenient and suitable place in geographical area of the Council.

(d) *Revision of Regulations.*—This subsection would authorize the Secretary to revise any regulation promulgated pursuant to this section, but in doing so, he would be required to follow the same procedures prescribed in subsections (a) through (c) for the promulgation of original regulations pursuant to a management plan.

(e) *Emergency Regulations.*—This subsection would authorize the Secretary, in emergency situations to waive the requirements for notice and public hearings required by subsections (a), (b), and (c) with respect to any regulation implementing a management plan. However, before doing so, he would be required to have the consent of the Council concerned, by the affirmative vote of not less than two-thirds of the membership of such Council, and he must have determined that due to an emergency situation arising with respect to the fishery concerned that notice and hearing on such regulations would be impractical, unnecessary, or contrary to the public interest. If any written objection to such procedure is received by the Secretary within 30 days of the effective date of the emergency regulations, then within 40 days of such effective date the Secretary would be required to initiate the regular procedures set forth in subsections (a), (b), and (c).

Any emergency regulation would remain in effect for one year unless terminated sooner by the Secretary.

SECTION 308—TEMPORARY EMERGENCY FISHERY MANAGEMENT PLANS PREPARED AND IMPLEMENTED BY THE SECRETARY WITH RESPECT TO CERTAIN FISHERIES

(a) *In General.*—This subsection would require the Secretary, within 90 days after the date of enactment of this Act, on his own initiative or at the request of any State to prepare a management plan and promulgate such regulations as may be necessary to implement such plan with respect to any coastal species or Continental Shelf species which he believes to be as of the date of the enactment of this Act, depleted, in imminent danger of becoming depleted, or under intensive use but unregulated because of the absence of management authorization. Before preparing such a plan, the Secretary would be required to consult with appropriate States and fishing industry representatives with respect to the fishery involved. The plan and implementing regulations would apply only within those waters which comprise the 9-mile contiguous fisheries zone, not within the territorial waters of the United States. Also, the plan and the implementing regulations would be deemed to be temporary emergency regulations.

The Committee has determined that there are ten species of fish that are considered to be depleted (see list included in definition section of this report under the remarks concerning the term "depleted").

The Committee is aware that there are a number of other species in imminent danger of becoming depleted. However, with respect to the category of fish that are "under intensive use but unregulated because of the absence of management authority", the Committee is aware that this list could be rather large. It is the species included in this latter category on which the Committee thinks cautionary action should be taken, particularly in view of the fact that the Councils will not have been organized by the time this action is taken and the fact that the fishermen concerned may feel that such precipitous action under the circumstances would not be justified. Therefore, the Committee expects the Secretary in carrying out his functions under this section to concentrate on those species that pose the most immediate need for regulation.

(b) *Interim Report.*—This subsection would merely require the Secretary, within 45 days after the date of enactment of this Act, to submit to the Congress a report which sets forth those fisheries which he plans to take action on pursuant to subsection (a).

(c) *Plan Requirements.*—This subsection would require the Secretary, in preparing any plan required by subsection (a), to include such requirements set forth in section 304(b)(3)—as he would be authorized to include when preparing any regular management plan—as he deems necessary, however, he could not include in such plan any requirement that would impose limited entry or license fees on United States fishing vessels.

(d) *Treatment of Regulations.*—This subsection would provide that any regulation promulgated by the Secretary to implement a plan under this section would be deemed to be an emergency regulation as if promulgated under section 307(e), which allows regulations to be promulgated without following the Administrative Procedure Act with respect to the requirements for notice and public hearing. However, if written objections to such procedures are subsequently received by the Secretary, then he would be required to follow the procedure set forth in section 307(e), which would trigger the requirements of section 553 of the Administrative Procedure Act.

The regulations would remain in effect for 180 days unless terminated sooner by the Secretary.

SECTION 309—STATE JURISDICTION

(a) *In General.*—This subsection would make it clear that nothing in this Act would extend or diminish the jurisdiction of any State seaward of the coastline of the United States except as provided in subsection (b), which would authorize the Federal Government to regulate certain stocks of fish in the territorial sea of the United States in certain instances.

(b) *Assertion of Federal Jurisdiction in Certain Instances.*—(1) *Findings.*—In this paragraph, the Congress would find that anadromous species and certain coastal and Continental Shelf species move during their life cycle within waters over which more than one State has jurisdiction and move from such waters to the high seas which are not within the jurisdiction of any State. The Congress would further find that it is not the purpose of this Act to affect State jurisdiction over fish principally found within waters under its jurisdiction but there may be instances where Federal regulation of such species within

such waters may be necessary in order to insure the effectiveness of a management plan.

(2) *Findings and action by Secretary.*—Under this paragraph, if the Secretary finds that any fishery management plan would apply to any of the species covered by this Act which are to any extent or at any time under the jurisdiction of any State and such State has taken, or failed to take, any action the result of which would substantially and adversely affect the carrying out of the plan, the Secretary would be required to declare that fishery within such State's waters to be subject to regulation by him pursuant to the plan and he would be required to assume responsibility for such regulation.

It is to be noted that in making his finding, the Secretary would be required to follow the requirements set forth in section 554 of the Administrative Procedure Act, which have to do with notice and opportunity for an agency hearing on the record.

Also, this paragraph would make it clear that the internal waters of a State, from the coastline inland, would in no way be affected by this Act.

Since the Federal Government can assert jurisdiction in the waters of any State only in those limited instances when the State action, or the State's failure to take action, will substantially as well as adversely affect the carrying out of the plan, the Committee is of the opinion that such preemption will be the unusual, rather than the usual, practice. The Committee is most hopeful that appropriate action will be taken by the States to cooperate with the Secretary so that Federal assertion of jurisdiction in such instances will not be necessary.

(c) *Resumption of State Regulation.*—Should the Secretary assert Federal jurisdiction and assume responsibility for the regulation of any fishery within State waters and should the State concerned thereafter apply to the Secretary for reinstatement of that State's regulation of such fishery, this paragraph would authorize the Secretary to declare such fishery to be subject to State regulation within that State's waters pursuant to the management plan, provided the Secretary finds that the reasons for which his regulation of the fishery was assumed no longer exist. In making such finding, the Secretary would be required to follow the requirements of section 554 of the Administrative Procedure Act.

SECTION 310—PROHIBITED ACTS

This section would describe the acts prohibited under this Act. In this regard, it is unlawful for any person (1) to violate any provision of this Act or any regulation promulgated to carry out any fishery management plan; (2) to violate any condition or restriction applicable to a permit, if fishing pursuant to a permit issued under section 201(g); (3) to refuse to permit any authorized representative of the Secretary, or the Secretary of the Department in which the Coast Guard is operating, to board any fishing vessel under the control of such person if the purpose of the boarding is to carry out any inspection relating to the enforcement of this Act, any regulation issued pursuant to a fishery management plan, or any condition or restriction of a permit; (4) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any authorized representative of the Secretary, or of

the Secretary of the Department in which the Coast Guard is operating, who is engaged in any reasonable inspection of a kind referred to in paragraph (3); or (5) to ship, transport, purchase, offer for sale, import, export, or have in custody, possession, or control any fish taken in violation of this Act, any regulation referred to in paragraph (1), or any condition or restriction referred to in paragraph (2).

It should be noted that any person committing any act prohibited by paragraph (1), (2), or (5) would be subject to a civil penalty and any person committing any act prohibited by paragraph (3) and (4) would be subject to a criminal penalty.

SECTION 311—CIVIL PENALTIES

(a) *Assessment of Penalty.*—This subsection would empower the Secretary of Commerce to levy civil penalties against persons who are found, after notice and opportunity for a hearing in accordance with section 554 of the Administrative Procedure Act, to have committed an act prohibited by paragraph (1), (2), or (5) of section 310. The amount of the civil penalty could not exceed \$25,000 for each violation. Each day of a continuing violation would constitute a separate offense. The actual amount of each civil penalty would be at the discretion of the Secretary after he has taken in consideration the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) *Review of Civil Penalty.*—If a civil penalty is assessed against anyone, this subsection would authorize that person to seek review in the Court of Appeals of the United States by filing a notice of appeal within 30 days of the date of such order. If the Secretary's decision is found to be unsupported by substantial evidence, as provided in 5 U.S.C. 706(e), the decision would be required to be set aside.

(c) *Action Upon Failure To Pay Assessment.*—If any penalized person fails to pay a finally adjudicated civil penalty, this subsection would require the Secretary to refer the matter to the Attorney General who, in turn, would be required to recover the amount assessed in any appropriate district court. In such action, the validity and appropriateness of the final order imposing the civil penalty would not be reviewable by the district court.

(d) *Compromise or Other Action by Secretary.*—This subsection would authorize the Secretary to compromise, modify, or remit any civil penalty which may be or has been imposed.

SECTION 312—CRIMINAL PENALTIES

This section would authorize the imposition of criminal penalties against persons committing any act prohibited by paragraph (3) or (4) of section 310. Conviction could result in a maximum fine of \$50,000. However, if any person uses a deadly or dangerous weapon in the commission of any act prohibited by such paragraphs, then such person would be subject to fine of not more than \$100,000, or imprisonment of not more than ten years, or both.

It should be noted that foreign fishing in the territorial sea, the fisheries zone, or for a managed species beyond the zone without a

permit would subject violators to the penalties provided by the Bartlett Act. Foreign fishing in violation of conditions or restrictions applicable to a permit authorizing fishing within the zone or for managed species beyond the zone would subject violators to the penalties provided by this Act.

SECTION 313—FORFEITURE

(a) *Application for Forfeiture.*—This subsection would authorize the Secretary or the Attorney General to seek forfeiture through any district court of any fishing vessel or its catch, cargo, or fishing gear or the monetary value thereof, used or intended for, or acquired in the commission by any person of any act prohibited by section 310. In any such judicial proceeding, the court at its discretion could enter restraining orders or prohibitions or take such other actions as are in the interest of justice, including the acceptance of satisfactory performance bonds in connection with any property subject to forfeiture.

(b) *Seizure.*—If a judgment is entered under this section for the United States, the Attorney General is authorized to seize all property or other interest declared forfeited upon such terms and conditions as are in the interest of justice. All provisions of law relating to the disposition of forfeited property, the proceeds from the sale of such property, the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims and the award of compensation to informants with respect to forfeitures would apply to forfeitures incurred, or alleged to have been incurred, insofar as applicable and not inconsistent with the provisions of this section. Duties imposed upon the collector of customs or any other person with respect to seizure, forfeiture, or disposition of property under the customs laws would be performed with respect to property used, intended for use, or acquired by activity in violation of any act prohibited by section 310 by such officers or other persons as may be designated for that purpose by the Secretary.

SECTION 314—ENFORCEMENT

(a) *In General.*—This subsection would direct the Secretary and the Secretary of the Department in which the Coast Guard is operating to carry out the enforcement of the provisions of this Act, any regulation promulgated to carry out any fishery management plan, and any condition or restriction attached to any permit issued pursuant to section 201(g). In carrying out such enforcement, the Secretary and the Secretary of the Department in which the Coast Guard is operating would be authorized to utilize by agreement, with or without reimbursement, the personnel, services, and facilities of any other Federal agency or of any State agency. In regard to any State agency, such personnel, services, and facilities could be used for purposes of enforcement with respect to domestic vessels wherever such domestic vessels may be found. With respect to foreign vessels, such personnel and services could be used only when such vessels are found within the fisheries conservation and management zone.

(b) *Authority.*—Enforcement powers provided by this subsection would include the authority, with or without a warrant, for authorized officers to board and inspect any domestic fishing vessel or any other vessel subject to the jurisdiction of the United States, and its catch

and gear, upon the waters of the fisheries conservation and management zone or upon all high seas seaward of such zone. Such enforcement powers would also include the authority for any such officer, with or without a warrant or other process, to arrest any person committing in his presence or view a violation of section 310 (3) or (4), those actions which are subject to criminal penalties. In addition to authorizing such officers to execute any warrant or other process issued by any officer or court of competent jurisdiction, this subsection would authorize such officers to seize any fishing vessel and fishing gear (whether such gear is in the water or on board such vessel) used in, as well as any fishing vessel on which occurs, the violation of any provision of this Act, any regulation promulgated pursuant to a plan, or any condition or restriction applicable to a permit issued under section 201. Also, such officers would be authorized to seize any fish, wherever found, taken in violation of any provision of this Act, any regulation or condition or restriction referred to in paragraph (4).

Any fishing vessel, fishing gear, or fish seized pursuant to paragraph (4) or (5) could be disposed of pursuant to an order of a court of competent jurisdiction, or, if perishable, in such manner as may be prescribed by regulation by the Secretary.

(c) *State Officers.*—This subsection would make it clear that any officer of any State, if designated pursuant to subsection (a) to function as a Federal law enforcement agent, would not be considered to be a Federal employee of the United States for the purposes of any laws administered by the Civil Service Commission.

(d) *Jurisdiction of Courts.*—This subsection would give the district courts of the United States exclusive jurisdiction over all cases or controversies arising under this Act, any regulation, or any permit issued pursuant to this Act.

(e) *Procedure.*—This subsection would establish the procedure to be followed when a warrant or other process in rem is issued in any cause under this section. In such situations, the Marshal or other officer would be required to stay the execution of such process, or discharge any fish seized if the process has been levied, in receiving a bond or other surety satisfactory to the court conditioned to deliver the fish seized or pay its equivalent value in money or to otherwise answer the decree of the court.

TITLE IV—AMENDMENTS TO OTHER LAWS RELATING TO THE FISHERIES AND MISCELLANEOUS PROVISIONS

SECTION 401—FISHERMEN'S PROTECTIVE ACT AMENDMENTS

(a) *Seizure Provision.*—Under present law (section 2 of the Fishermen's Protective Act), where a vessel of the United States is seized by a foreign government on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States and there is no dispute of the material facts with respect to the location or activity of such vessel at the time of such seizure, then the Secretary of State would be required as soon as practicable to take such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country, to secure the release of such vessel and crew, and to immediately ascertain the amount of any fine, fee, or other direct charge which may be reimbursable under section 3 of the Fishermen's Protective Act.

Section 3 of such Act requires the Secretary of the Treasury, in any case where a vessel of the United States is seized by a foreign country under the conditions set forth in section 2, to reimburse the owners of the vessel for the amount of any fine, license fee, registration fee, or any other direct charge which must be paid in order to secure the prompt release of the vessel and crew.

Subsection (a) of this section would amend section 2 of the Fishermen's Protective Act by retaining existing law and by adding a new provision that would allow for the reimbursement of any fine, license fee, registration fee, or any other direct charge paid under the following circumstances: where a vessel of the United States is seized by a foreign country while such vessel is engaged in fishing in any area of the high seas (and the rights or claims of fisheries conservation and management jurisdiction in such area by such country are recognized by the United States) for a specific stock of fish (including, but not limited to, tuna and any other highly migratory species of fish), and vessels of the United States have previously fished in such area for such stock.

In essence, the new language added by this subsection to the Act is intended to extend the protection of the Fishermen's Protective Act to situations where United States vessels are seized for engaging in fishing within 200 miles of the shores of a nation for a specific stock of fish in areas where such vessels have previously fished for such stocks. For example, after July 1, 1976, should United States vessels be seized for engaging in the taking of tuna within 200 miles of Ecuador or Peru, then the owners of such vessels would be entitled to receive reimbursement for any charges, regardless of how characterized or calculated, that are required to be paid in order to secure the prompt release of the vessel and crew.

(b) *Reimbursement Provision.*—This subsection would amend section 3(a) of the Fishermen's Protective Act to clarify what is meant by the term "other direct charges" where it appears in the Act. This term would be defined to mean any levy, however characterized or computed (including, but not limited to, computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.

This amendment to section 3(a) of the Act would apply with respect to seizures occurring on or after December 31, 1974.

The need for this amendment arises because of the seizure in early 1975 of a number of United States tuna vessels by the Government of Ecuador. When Ecuador seized the vessels, three of such vessels had their catch confiscated and, in lieu of confiscation, the Ecuadorian authorities required the vessel owners to pay the monetary value of the fish on board such vessels to the Ecuadorian Government. The payments made by the vessel owners were as follows: *Neptune* \$72,000; *A.K. Strom* \$120,968; and *Jaqualine A* \$34,000; for a total of \$226,968.

Had the fish been actually confiscated, the vessel owners would have been reimbursed for the fair market value of such fish under the voluntary insurance program provided by section 7 of the Fishermen's Protective Act.

Since the fish were not actually confiscated and the monetary value of such fish was required to be paid in lieu of confiscation, the Department of Commerce determined that no reimbursement would lie under section 7 of the Act.

As previously pointed out, section 3 of the Act provides for reimbursement of any fine, license fee, registration fee, or any other direct charge required to be paid in order for a vessel owner to obtain release of his vessel illegally seized. In the case of these three vessels, the State Department interpreted the Act narrowly, and determined that the clause "any other direct charge" would not include the monies paid for the monetary value of the fish. Consequently, these vessel owners are out \$226,968.

The amendment would have the effect of making these claims, as well as any future similar claims, reimbursable under section 3 of the Act.

Also, the Committee would like to make it clear that whenever there is a seizure of a United States vessel covered by this Act, the Act should be interpreted in such a way as to make the vessel owners whole. In general, it is the intent of the Committee for any vessel owner to be reimbursed for all losses incurred (during the seizure and detention period) either under section 3 or section 7 of the Act (if the vessel owner is participating in the voluntary insurance program). The only exception to full reimbursement would be that loss relating to loss of fishing time. Section 7(a)(3) of the Act allows the owner and crew of such vessel to be reimbursed for only 50 percent of the loss of fishing time while the vessel is being detained.

SECTION 402—AMENDMENTS TO THE ACT OF MAY 20, 1964

(a) *Amendments.*—Under the Act of May 20, 1964 (better known as the Bartlett Act), section 1 thereof, makes it unlawful for any vessel, except a vessel of the United States, or for the master or other person in charge of such a vessel, to engage in the fisheries within the territorial waters of the United States, or within waters (nine-mile contiguous fisheries zone) in which the United States has the same rights in respect to fisheries as it has in its territorial waters or to engage in the taking of any Continental Shelf fishery resource which appertains to the United States. In the latter case, Public Law 93-242 declares the following to be creatures of the Continental Shelf: 15 species of crustacea (including American lobster, tanner crab, king crab, etc.); 6 species of mollusks, (including red abalone, surf clam, etc.); and 4 species of sponges (including yellow sponge, grass sponge, etc.).

In addition, section 1 of the Bartlett Act authorizes the following exceptions to the prohibition against foreign fishing: (1) those provided by an international agreement to which the U.S. is a party; and (2) those provided in the Act. With respect to the latter, 60 days after written notice to the President of the Senate and the Speaker of the House of intent to do so, the Secretary of the Treasury could authorize a foreign fishing vessel to fish for designated species within the territorial waters, or the contiguous fisheries zone, or for resources of the Continental Shelf which appertain to the U.S. However, before this permission could be granted, the Secretary of State and the Secretary of Commerce would have to certify that such permission would be in the national interest, the coastal State affected would have to give its concurrence, and the Secretary of Commerce would have to find that the country of the foreign vessel extends substantially the same fishing privileges for a fishery to U.S. vessels.

Also, the Secretary of State, with the concurrence or the Secretaries of the Treasury and Commerce, could permit a foreign vessel, owned or operated by an international organization, of which the United States is a member, to engage in fishery research within the territorial waters or contiguous fisheries zone, or for Continental Shelf fisheries resources and to land its catch at a U.S. port if determined to be in the national interest to do so.

Section 2 of the Bartlett Act makes persons violating the provisions of the Act subject to a fine of \$100,000 or imprisonment for one year, or both. In addition, the vessel involved in a violation, including its tackle, apparel, furniture, appurtenances, cargo, and stores are subject to forfeiture and all fish taken or retained in violation of the Act or the monetary value thereof are forfeited. For the purposes of this Act, there is a rebuttable presumption that all fish found aboard a vessel seized in connection with a violation were taken or retained in violation of the Act.

Subsection (a) of this section, in rewriting section 1 of the Bartlett Act, would retain the provisions of that section which make it unlawful for a foreign vessel, or the master or other person in charge of such a vessel, to engage in fishing within the territorial waters of the United States and for any Continental Shelf fishery resource. With respect to the prohibition relating to the contiguous fisheries zone, this subsection would modify the prohibition in two respects. First, the zone would be extended from 9 to 197 miles as provided by title I of this Act (which comes into force and effect July 1, 1976). Second, fishing in such zone would be allowed only pursuant to a permit issued under section 201 of this Act, which, in essence, is tantamount to an international fishery agreement authorized under section 1 of the Bartlett Act as presently written.

In addition, section 1 of the Bartlett Act, as rewritten by this subsection, would add a new prohibition. It would make it unlawful for any foreign vessel or for the master or other person in charge of such a vessel to engage in fishing for any anadromous species beyond such fisheries conservation and management zone (200 miles) for which a management plan has been implemented under title III of this Act, unless such fishing is authorized under a permit issued pursuant to section 201 of this Act.

In addition, this subsection would rewrite section 1 of the Bartlett Act so as to eliminate all of the exceptions to the prohibition against foreign fishing in such waters except the one relating to vessels owned or operated by an international organization. In this regard, the exception was broadened so as to allow fisheries research in the newly defined expanded fisheries conservation and management zone provided the Secretary determined that such research would be in the national interest.

Also, this subsection would make a technical amendment to section 5(c) of the Bartlett Act by substituting the word "fishing" for the word "fisheries".

(b) *Effective Date.*—This subsection would make the amendments provided by subsection (a) effective July 1, 1976.

SECTION 403—ATLANTIC TUNAS CONVENTION ACT AMENDMENT

Under the definition section of the Atlantic Tunas Convention Act, the term "fisheries zone" is defined to mean the entire zone established by the United States under the Act of October 14, 1966 (which means the nine-mile contiguous fisheries zone).

Section 105 of this Act would repeal the Act of October 14, 1966, effective July 1, 1976. Therefore, it is necessary to amend the definition of "fisheries zone" as defined in the Atlantic Tunas Convention Act to appropriately reflect the fisheries conservation and management zone that would be established by this Act. Consequently, section 2(4) of that Act was amended accordingly, the effective date of such amendment being July 1, 1976.

SECTION 404—MARINE MAMMAL PROTECTION ACT AMENDMENT

Under the definition section of the Marine Mammal Protection Act, the term "waters under the jurisdiction of the United States" is defined to mean: (a) the territorial seas of the United States; and (b) the fisheries zone established pursuant to the Act of October 14, 1966 (which means the nine-mile contiguous fisheries zone).

Section 105 of this Act would repeal the Act of October 14, 1966, effective July 1, 1976. Therefore, it is necessary to amend the definition of "waters under the jurisdiction of the United States", as defined in the Marine Mammal Protection Act, in order to appropriately reflect the fisheries conservation and management zone that would be established by this Act. Consequently, section 3(15)(B) of that Act was amended accordingly. The amendment would take effect July 1, 1976.

SECTION 405—AUTHORIZATION OF APPROPRIATIONS

This section would authorize to be appropriated such sums as may be necessary to carry out the purposes of this Act, other than section 306(d)(3). Section 306(d)(3) contains its own authorization for appropriations.

Pursuant to Clause 7(a)(1) of Rule XIII, of the Rules of the House of Representatives, the Departments of Commerce and Transportation, the Agencies primarily charged with the implementation of this Act, were requested to assist the Committee in estimating the cost of carrying out this Act for the current Fiscal Year and for each of the next five succeeding fiscal years.

No official estimate was received from the Department of Commerce. It was estimated that there would be no additional cost to the Department of State in carrying out its functions under the Act since such functions would be administrative in nature. The estimate of the Department of Transportation, together with accompanying letter, follow:

DEPARTMENT OF TRANSPORTATION,
UNITED STATES COAST GUARD,
Washington, D.C., August 19, 1975.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request of 14 August 1975 concerning an estimate of Coast Guard expenditures

connected with the implementation of H.R. 200, (Marine Fisheries Conservation Act of 1975). We have developed what we consider to be a reasonable and effective plan of action.

The main thrust of our planned approach would provide various levels of coverage of known active fishing areas in direct proportion to the experienced intensity of foreign fishing activity, i.e. our enforcement efforts would concentrate on those areas where and when the fishing will most likely be done. In addition, periodic patrols to the limit of jurisdiction will be made to detect changes in fishing patterns and to make our presence known throughout the area. A mix of long and medium range aircraft would patrol the areas to monitor foreign fishing activity and provide fishing vessel locations to cutters on fisheries patrols. A mix of high and medium endurance cutters with helicopters embarked whenever possible would be used to monitor foreign fishing activity through examination from the helicopter and the cutter itself as well as through any boarding of the foreign vessels that may be permitted. The cutters would also make any seizures that may be permitted.

To acquire and operate these facilities will require a very substantial increase in our operating expense and acquisition, construction and improvement appropriations. I have enclosed an estimate of these costs that has been previously provided to a number of individual members of both houses on their request. I must caution that all of these costs are expressed in FY 1975 dollars. We are in the process of refining these estimates and updating them to reflect FY 1976 costs and we already know that increases in all categories will be needed to carry out the plan previously described. Major increases in reactivation and new procurement items are now certain.

In addition, we also have been reevaluating how best to respond to this new requirement in the period immediately following an extension of jurisdiction. This will be a particularly critical and difficult time in terms of the availability of facilities. The five-year financial plan contained in the enclosure is based on reactivation of six over-aged high endurance cutters, which have been held in reserve for this purpose, together with activation of several deactivated helicopters. It is becoming evident that reactivation of these old vessels, even as a stop-gap measure, is increasingly less attractive with the passage of time. These ships cannot carry helicopters, and, because of their age, machinery maintainability is a serious question. If the extension of jurisdiction does not occur in the next year, I believe reactivation of these vessels may not be in the best interest of the public. Similarly, the costs of recommissioning the deactivated helicopters and the leadtimes which are developing in the ordering of spare parts for them now suggests that acquisition of new aircraft may provide a more timely, complete, and economical response to extension requirements. We are currently looking into alternative interim methods of meeting these initial needs.

The results of the repricing of the five-year plan and revalidation of interim implementation plans is expected in the near future. When completed, we will provide the data to you.

O. W. SILVER,
Admiral, U.S. Coast Guard,
Commandant.

Attachment.

5-YR PROJECTION, PLANNED APPROACH—200 MI JURISDICTION RESOURCE REQUIREMENTS

[In thousands of dollars]

	Fiscal year—					
	1976	1977	1978	1979	1980	1981
1. Procurement/Reactivation planned facilities:						
Aircraft:						
(a) HH52's-reactivate (10).....	0	1,000	0	0	0	0
(b) LRS-Procure (6) ¹	0	33,114	0	0	0	0
(c) MRS-Procure (4).....	0	0	11,240	0	0	0
Ships:						
(a) HEC's-Reactivate (6).....	0	6,800	0	0	0	0
(b) HEC's-Build (10) ²	0	0	0	110,000	110,000	0
Total.....	0	40,914	11,240	110,000	110,000	0
2. Start-up costs.....	0	3,520	3,850	1,650	1,980	0
3. Operating costs:						
Aircraft:						
(a) HH52's (10).....	0	1,605	1,605	0	0	0
(b) LRS (6) augmented.....	0	2,304	3,457	3,457	4,609	0
(c) MRS (4).....	0	0	1,200	1,200	0	0
Ships:						
(a) Reactivate HEC's (6).....	0	6,000	6,000	0	0	0
(b) New HEC's (10) ³	0	0	0	0	0	0
Total, direct operating costs.....	0	9,909	12,262	4,657	4,609	0
Indirect support costs.....	0	4,955	6,131	2,328	2,305	0
Total annual increase.....	0	14,864	18,393	6,985	6,914	0
Total annual operating costs.....	0	14,864	33,257	40,242	47,156	47,156

¹ Procure 6 LRS A/C; operate with augmented crew.² Replace 5 each: aged 255 ft and 327 ft cutters.³ Cost of operating new cutters offset by costs of decommissioned cutters.

Note: If jurisdiction is extended during fiscal year 1976, a supplemental budget request will be submitted for those items appearing under fiscal year 1977. If appropriated, all projections except for WHEC replacements are for 1 yr earlier.

Although the Department of Commerce did not submit an official estimate as to the cost of carrying out its functions under this Act, informal discussions were held between the staffs of the Committee and the Department and such discussions proved to be most helpful in arriving at estimated costs.

It appears that a number of studies involving fisheries management under extended jurisdiction, as provided by this Act, have been made recently and have included various estimates of the costs that would be involved. However, based on these studies, it can be safely assumed, at this time—August, 1975, that it is not possible to develop accurate projected costs for the next five fiscal years. Therefore, any figure used must be considered as a preliminary estimate subject to revision as events and knowledge related to this issue become more clearly focused.

With the understanding that solid budget projections are not available, it can be stated that at least five different elements must be taken into account when computing the probable cost of implementing this Act by the Department of Commerce. These five elements are: (1) salary and expenses associated with the seven Regional Councils; (2) physical housekeeping expenses; (3) nonreimbursable staff support to the Councils and interdisciplinary planning activities provided by the Department; (4) expanded enforcement and surveillance capability of the Department (over and aboard the activities of the Coast Guard and Navy); and (5) expanded fishery surveys and economic and statistical data collection and analysis activities provided by the Department.

These five elements could be grouped into two functional categories. The first category would involve the fisheries management planning activities and operations of the seven Regional Councils (elements one and two). The second category would involve the planning, enforcement, research, and statistics activities of the Department (elements three, four, and five).

A conservative estimate for the first year costs of the activities of the Councils (the first functional category mentioned above) would be approximately \$1 million. A similarly conservative estimate for the fisheries management activities of the Department (the second functional category) for the first year would be approximately \$20 million. The total first year cost of the legislation, for Fiscal Year 1977, therefore, would be approximately \$21 million over present levels of funding. To implement this Act for the remainder of Fiscal Year 1976 and the transition period (July 1, 1976, to September 30, 1976) would be considerably less for a number of reasons particularly in view of the fact that less than a full year would be involved.

Annual costs beyond the first year could be subject to considerable changes from the first year costs. In fact, in one study carried out by the Department staff, it was estimated that an annual increase of about \$40 million over present operation needs would be required.

For more information on the cost of implementing this Act, see the table included under the "Cost of the Legislation" section hereinafter contained in this report.

SECTION 406—SEVERABILITY

This section would declare the provisions of this Act to be severable, and if any part of the Act is declared unconstitutional or the applicability thereof is held to be invalid, then the constitutionality of the remainder and the applicability thereof would not be affected thereby.

COST OF THE LEGISLATION

In the event the legislation is enacted into law, the Committee estimates the cost to the Federal Government (based on information supplied by the Government agencies and their representatives) for the current fiscal year and for each of the next five succeeding fiscal years to be as follows:

IN SUMMARY
[In thousands of dollars]

Departments and programs	Fiscal year 1976	1976 transition period July 1 to Sept. 30	Fiscal year 1977	Fiscal year 1978	Fiscal year 1979	Fiscal year 1980	Fiscal year 1981
	TRANSPORTATION (Coast Guard):						
Procurement.....	40,914	000	11,240	110,000	110,000	000	000
Start-up costs.....	3,520	000	3,850	1,650	1,980	000	000
Operating costs.....	7,432	11,148	29,541	36,526	43,440	43,440	43,440
Subtotal.....	51,866	11,148	44,631	148,176	155,420	43,440	43,440
COMMERCE: Fisheries management plan, operation of 7 regional councils, planning enforcement, research and statistics activities.....							
STATE.....	4,000	2,000	21,000	25,000	30,000	35,000	40,000
	0	0	0	0	0	0	0
Total.....	55,866	13,148	65,631	173,176	185,420	78,440	83,440

After reviewing the estimate of costs made by representatives of the Federal Government with respect to this Act, the Committee has concluded that at this time these estimates are reasonable and that the costs incurred in carrying out this Act will be consistent with those estimates subject to the following caveats: (1) these estimates are based on FY 1975 dollars; and (2) such estimates may need to be revised upward as circumstances change.

COMPLIANCE WITH CLAUSE 2(1)(3) OF RULE XI

With respect to the requirements of clause 2(1)(3) of House 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 Congress. However, the Subcommittee on Fisheries and Wildlife Conservation and the Environment held 10 days of hearings on the predecessor legislation in the 93rd Congress, and two weeks of hearings on H.R. 200 and identical and similar bills during the first session of this Congress. The Subcommittee does plan to hold oversight hearings on the administration of this Act early in the next session of this Congress.

(B) Section 308(a) of the Congressional Budget Act of 1974 is not presently in effect. Therefore, no statement is furnished.

(C) No estimate and comparison of costs has been received by the Committee from the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974.

(D) 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.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 200 would have no significant inflationary impact on the prices and costs in the national economy.

DEPARTMENTAL REPORTS

The reports of the Departments of State, Interior, and Justice on H.R. 200 and related bills follow herewith:

DEPARTMENT OF STATE,
Washington, D.C., May 9, 1975.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MRS. SULLIVAN: This letter presents the views of the Executive Branch on H.R. 197, 200, 948, 1452, 1839, 2172, 2173 and 2712. It is in response to your requests to individual departments, which requests were in turn referred to the NSC Interagency Task Force on the Law of the Sea, in accordance with Executive Branch procedure.

The bills would extend the United States' contiguous fisheries zone from its present width of 9 miles beyond our 3-mile territorial sea to

various distances. H.R. 200 also provides for the extension of United States jurisdiction over anadromous fish of U.S. origin to the full limit of their range in the oceans, except within the territorial waters or fisheries zone of another country. Under the bill the Secretary of State is also required to seek, inter alia, treaties or international agreements with appropriate foreign contiguous States on the boundaries between the waters adjacent to the United States and waters adjacent to such foreign countries for the purpose of rational utilization and conservation of the resources covered by H.R. 200.

We recognize that the coastal fishermen of the United States have encountered severe problems in recent years and that overfishing for some species has caused a depletion of the stocks involved. Accordingly, we are sympathetic to the need for a solution to the genuine problems which have prompted these bills. However, in our view the best solution can be attained by multilateral agreement in the Third United Nations Conference on the Law of the Sea. The first substantive session of the Conference was held in Caracas from June 20 to August 29, 1974; the second substantive session of the Conference is being held in Geneva from March 17 to May 10, 1975.

As you are aware, we forcefully put forth our fisheries position in the Law of the Sea Conference and made substantial progress towards our fisheries goals. A fully enforceable solution to the fisheries problem must be an internationally negotiated one supported by the community of nations. A unilateral declaration of fisheries jurisdiction at this time could seriously undermine our efforts in the Law of the Sea Conference and hamper the chances for a satisfactory settlement of the fisheries questions on a multilateral basis.

In the Law of the Sea negotiations, a large majority of nations, including the U.S., supported broad coastal State controls over coastal fisheries in a 200-mile economic zone. Thus, the outcome of the LOS Conference is likely to be an international agreement which will substantially enhance coastal State, and thus United States, control over coastal stocks. In addition, we believe it is important that a rational, effective international management system for highly migratory species, as well as host State regulation of anadromous species, be established.

Recognizing that the Law of the Sea Conference will take time to complete its work and that there will be additional delays pending ratification, there is indeed an interim problem with respect to our coastal fisheries. In light of this problem, we have taken steps to enhance the protection of our coastal stocks and to alleviate the problems of our coastal fishermen until a new international legal system for fisheries management is established. First, we have proposed that the fisheries regime agreed to by the Law of the Sea Conference go into effect on a provisional basis pending the actual entry into force of the treaty. Second, we are working to strengthen both bilateral and multilateral agreements with nations whose nationals conduct fishing operations off our coasts. Third, we have adopted stringent new enforcement guidelines for the protection of our continental shelf fisheries resources.

As an example of U.S. multilateral efforts, the International Commission for the Northwest Atlantic Fisheries (ICNAF) has developed a highly sophisticated and complex fisheries regulation system which governs the taking of all desired species, thus reducing the by-catch of

species of importance to American fishermen. The overall foreign catch quotas in this area, lowered in 1974, have been further reduced by approximately 8% for 1975 and undoubtedly will be lowered again in 1976. U.S. catch quotas will be going up during this period. In addition, the regulatory system has been frequently refined during recent meetings to afford greater protection to American fishermen interested in haddock, yellowtail flounder, and herring. Moreover, the system of international enforcement of the ICNAF regulations is being constantly improved. Through all of these actions the strong special interest of the coastal nation in coastal species has been recognized.

Furthermore, in December, 1974, the U.S. and Japan reached agreement concerning fishing in the northeastern Pacific and Bering Sea. The new agreements established new and better balances between fishing effort and the abundance of the resource. Some principal features of the US-Japanese understanding include a reduction in the Japanese catch of pollock of 400,000 tons; special controls on the Japanese harvest of various fish in the area by means of catch limitations as well as area and time closures; mutual arrangements regarding loading and transfer operations and restricted fishing in areas where U.S. fishermen concentrate their efforts; and new procedures by the Japanese to reduce and control the incidental catch of king and tanner crab. The Japanese also agreed to reduce their quota of king crab from 700,000 to 300,000 crabs (a reduction of nearly 60%) and to a smaller reduction in their total tanner crab catch (but with a 70-80 percent reduction in the Japanese quota in areas traditionally fished by U.S. crabbers). The two countries also made arrangements for enforcement measures with respect to crabs more stringent than any ever before agreed to by them, including an opportunity for the United States to observe the conduct of fishing operations on Japanese vessels.

It should be noted that ICNAF includes virtually all fisheries off our Atlantic coast, and that the Japanese conduct by far the largest fishery off our Pacific coast. However, the international protections we have are not limited to the examples cited above. We have additional arrangements on both coasts with a number of nations for the further protection of U.S. fishery interests.

We feel that these steps have significantly increased the protection of our coastal stocks, although we recognize that the problem is far from fully solved. While the bills under discussion are attempts to provide added protection for our coastal fisheries during this interim period, we believe that the legislation could nevertheless have serious harmful consequences both for the Law of the Sea negotiations and for the long-term fishing interests of the United States.

Implementation of this legislation would constitute unilateral action by the United States at the very time the world community is seeking a new regime for international fisheries through international agreement. Such unilateral action, in our opinion, runs counter to established fundamental principles of international law. It is the view of the United States that under existing international law no State has the right unilaterally to extend its fisheries jurisdiction to 200 miles, and we do not recognize such claims. A departure from this principle by the United States could encourage similar claims by other countries. The nature of such foreign claims would not necessarily be influenced by

the interim nature or "reasonableness" of our own action, and could include claims to other alleged rights such as those affecting navigation and overflight, straits, and scientific research. Moreover, this action could lead some States to seek to delay or to impede the work of the Conference, thus threatening the possibility of agreement. It would disrupt our cooperation with like-minded States in the Law of the Sea negotiations and could directly undercut our fisheries proposals in the conference. The interim character of the legislation does not render it less troublesome in these respects. Furthermore, in our opinion, the harm done to overall national interests in the achievement of a successful international agreement by this type of unilateral action would far outweigh any short-term, interim benefits.

Moreover, a unilateral extension of our contiguous fisheries zone as outlined in these bills would not fully protect all our fishing interests, which are both coastal and distant. Our distant water fishing interests, such as the tuna and shrimp industries, would actually be prejudiced by our unilateral action. The United States would be compelled, in effect, to recognize extended fisheries zones of other coastal States, at least to the extent of our own unilateral claim, and, in addition to a direct effect on our distant fishing rights, this would have detrimental implications for the coverage of the Fishermen's Protective Act of 1967. Furthermore, there is no reason to believe that distant water fishing nations would recognize our unilateral claims, thereby creating serious foreign policy and enforcement problems. In order to be effective, the extension of jurisdiction contemplated under these bills would require an increase in enforcement capability to patrol adequately the expanded area. Adm. O. W. Siler, Commandant of the U.S. Coast Guard, reported on the Coast Guard's current planning in this regard in his letter to Mr. Murphy dated August 23, 1974.

In the Law of the Sea Conference, the United States has introduced a fisheries proposal which is based on acceptance of a 200-mile economic zone and which offers a rational management system for the U.S. fishing industry, as well as the diverse interests of the international community.

Our proposal is based on an approach that reflects our overall view that coastal state control over coastal species within the economic zone and host State control over anadromous fish should be subject to international standards and compulsory dispute settlement so as to protect the interests of all States and the international community in general. The jurisdiction exercised by the coastal State over coastal species would be limited to the zone. Each coastal State would have a preferential right to that portion of the allowable catch it could harvest. The remaining portion would be open to harvest by fishermen of other nations, subject to nondiscriminatory coastal State conservation measures and reasonable fees to defray their share of the cost of such regulation. The extent to which the coastal State preference would reduce traditional distant water fishing would be determined through negotiations at the Law of the Sea Conference.

Under our proposal, anadromous species would be subject to the jurisdiction of host State of origin. On the other hand, highly migratory stocks, such as tuna, would be managed by international organizations in which all fishing and coastal States could participate. These organizations would manage stocks subject to the same international standards and compulsory dispute settlement procedures as envisioned for coastal species.

As indicated above, at Caracas a large majority of nations supported broad coastal State control over coastal fisheries. Even major distant water fishing States recognized that an overall Law of the Sea treaty will include greater protection for coastal States' fisheries interests than exists at present. Thus, we feel that the best resolution of the fisheries question can be attained by multilateral agreement in the Law of the Sea Conference.

Furthermore, from the standpoint of the rational management of marine resources, all fishing activities—both domestic and foreign—must be considered. Provision must be made for the development of regional fisheries management plans prepared on the basis of advice and input from State government officials and affected local interests. The Federal Government must hold a position of general leadership and authority for regulating fisheries, but this leadership and authority must be exercised in cooperation with the State governments and other interests. We are developing such management plans so that, at the conclusion of the Law of the Sea Conference, we will be able to move quickly to institute effective management over the resources off our coasts.

For the reasons stated above, the executive branch opposes the enactment of the bills discussed in this letter.

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

Sincerely,

JOHN NORTON MOORE,

Chairman, the NSC Interagency Task Force on the Law of the Sea, and Deputy Special Representative of the President, for the Law of the Sea Conference.

U.S. DEPARTMENT OF THE INTERIOR,
Washington, D.C., March 6, 1975.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: Your committee has requested the views of this Department on the following bills:

H.R. 197—To establish a contiguous fishery zone (200-mile limit) beyond the territorial sea of the United States.

H.R. 200—To extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry, and for other purposes.

H.R. 948—To establish a contiguous fishery zone of the United States beyond its territorial seas at a distance of 200 miles or the length of the Continental Shelf, whichever is greater.

H.R. 1070—To provide for the conservation and management of fisheries, and for other purposes.

H.R. 1452—To extend the contiguous fisheries zone of the United States to a distance of 197 miles seaward of the territorial sea.

H.R. 1839—To establish a contiguous fishery zone (200-mile limit) beyond the territorial sea of the United States."

H.R. 1840—To amend the act entitled "An Act to establish a contiguous fishery zone beyond the territorial sea of the United States," approved October 14, 1966, to require that the method of straight baselines shall be employed for the purposes of determining the boundaries of such fishery zone, and for other purposes.

H.R. 2172—To establish fishing zones of the United States beyond its territorial seas, and for other purposes.

H.R. 2173—To establish a contiguous fishery zone (to the outer limits of the Continental Shelf) beyond the territorial sea of the United States.

H.R. 2712—To amend the Act entitled "An act to establish a contiguous fishery zone beyond the territorial sea of the United States, approved October 14, 1966.

H.R. 3412—To extend the fisheries management responsibility and authority of the United States over fish in certain ocean areas in order to conserve and protect such fish from depletion, and for other purposes.

All of these bills are similar in that they would each, in some manner, extend the United States jurisdiction over coastal fisheries beyond the twelve mile limit over which we not exercise jurisdiction. Since all of these bills involve major questions regarding their impact on the United States position in the current Law of the Sea negotiations, the responsibility for developing Executive Branch policy on this legislation has been assigned to the Law of the Sea Task Force under the aegis of the Department of State. We understand that the views of the Executive Branch on these bills have been transmitted to your Committee by the Department of State on behalf of the Law of the Sea Task Force. Accordingly we defer to the recommendations contained in that report.

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,

JOHN H. KYL,
Assistant Secretary of the Interior.

DEPARTMENT OF JUSTICE,
Washington, D.C., May 16, 1975.

HON. LEONOR K. SULLIVAN,
Chairman, Committee on Merchant Marine and Fisheries, House of Representatives, Washington, D.C.

DEAR MADAM CHAIRMAN: This is in response to your request for comments on H.R. 200, a bill to extend on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry, and for other purposes.

H.R. 200 would extend the exclusive fisheries jurisdiction of the United States to a 200-mile zone contiguous to our coasts. The bill would also extend U.S. jurisdiction over its anadromous fish to wherever those fish are found.

As you are aware, the entire question of jurisdiction over resources of the high seas is a subject of major concern at the continuing Third United Nations Conference on the Law of the Sea. Although no resolution of the problem has yet been reached, it is anticipated that the

Conference will result in an international agreement. Pending final outcome of the Conference, the National Security Council's Law of the Sea Task Force is responsible for preparing coordinated replies of the executive branch with respect to matters bearing on the negotiations at the Conference. We have been informed by the task force that such a coordinated response, including the views of the Department of Justice, will be submitted in connection with this 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,

A. MITCHELL McCONNELL, Jr.,
Acting Assistant Attorney General,
Office of Legislative Affairs.

CHANGES IN EXISTING LAW MADE BY THE BILL AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF OCTOBER 14, 1966

(80 Stat. 908; 16 U.S.C. 1091-4)

[AN ACT To establish a contiguous fishery zone beyond the territorial sea of the United States.

[Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is established a fisheries zone contiguous to the territorial sea of the United States. The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign states within this zone as may be recognized by the United States.

[SEC. 2. The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary.

[SEC. 3. Whenever the President determines that a portion of the fisheries zone conflicts with the territorial waters or fisheries zone of another country, he may establish a seaward boundary for such portion of the zone in substitution for the seaward boundary described in section 2.

[SEC. 4. Nothing in this Act shall be construed as extending the jurisdiction of the States to the natural resources beneath and in the waters within the fisheries zone established by this Act or as diminishing their jurisdiction to such resources beneath and in the waters of the territorial seas of the United States.]

SECTIONS 2 AND 3, FISHERMEN'S PROTECTIVE ACT OF 1967, AS AMENDED

(68 Stat. 883; 22 U.S.C. 1972-1973)

[Sec. 2. In any case where—

[(a) a vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; and

[(b) there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure, **[the Secretary of State shall as soon as practicable take such action as he deems appropriate to attend to the welfare of such vessel and its crew while it is held by such country, to secure the release of such vessel and crew, and to immediately ascertain the amount of any fine fee, or other direct charge which may be reimbursable under section 3(a).]**

SEC. 2. In any case where—

(1) any vessel of the United States is seized by a foreign country on the basis of rights or claims in territorial waters or the high seas which are not recognized by the United States; or

(2) any vessel of the United States is seized by a foreign country while such vessel is engaged in fishing in any area of the high seas (and the rights or claims to fisheries conservation and management jurisdiction in such area by such country are recognized by the United States) for a specific stock of fish (including, but not limited to, tuna and any other highly migratory species of fish), and vessels of the United States have previously fished in such area for such stock,

and there is no dispute of material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall as soon as practicable take action to attend to the welfare of such vessel and its crew while it is held by such country to secure the release of such vessel and crew, and to immediately ascertain the amount of any fine, license fee, registration fee, or any other direct charge which may be reimbursable under section 3(a) of this Act.

SEC. 3. (a) In any case where a vessel of the United States is seized by a foreign country under the conditions of section 2 and a fine, license fee, registration fee, or any other direct charge must be paid in order to secure the prompt release of the vessel and crew, the owners of the vessel shall be reimbursed by the Secretary of the Treasury in the amount certified to him by the Secretary of State as being the amount of the fine, license fee, registration fee, or any other direct charge actually paid. For purposes of this section, the term "other direct charge" means any levy, however characterized or computed (including, but not limited to, computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee. Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 9.

(b) The Secretary of State shall make a certification under subsection (a) of this section as soon as possible after he is notified pursuant to section 2(b) of the amounts of the fines, fees, and other direct charges which were paid by the owners to secure the release of their vessel and

crew. The amount of reimbursement made by the Secretary of the Treasury to the owners of any vessel under subsection (a) of this section shall constitute a lien on the vessel which may be recovered in proceedings by libel in rem in the district court of the United States for any district within which the vessel may be. Any such lien shall terminate on the ninetieth day after the date on which the Secretary of the Treasury reimburses the owners under this section unless before such ninetieth day the United States initiates action to enforce the lien.

ACT OF MAY 20, 1964 AS AMENDED

(78 Stat. 194-6; 16 U.S.C. 1081-6)

AN ACT To prohibit fishing in the territorial waters of the United States and in certain other areas by vessels other than vessels of the United States and by persons in charge of such vessels.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That it is unlawful for any vessel, except a vessel of the United States, or for any master or other person in charge of such a vessel, to engage in the fisheries within the territorial waters of the United States, its territories and possessions and the Commonwealth of Puerto Rico, or within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters or in such waters to engage in activities in support of a foreign fishery fleet or to engage in the taking of any Continental Shelf fishery resource which appertains to the United States except as provided in this Act or as expressly provided by an international agreement to which the United States is a party. However, sixty days after written notice to the President of the Senate and the Speaker of the House of Representatives of intent to do so, the Secretary of the Treasury may authorize a vessel other than a vessel of the United States to engage in fishing for designated species within the territorial waters of the United States or within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters or for resources of the Continental Shelf which appertain to the United States upon certification by the Secretaries of State and of the Interior that such permission would be in the national interest and upon concurrence of any State, Commonwealth, territory, or possession directly affected. The authorization in this section may be granted only after a finding by the Secretary of the Interior that the country of registry, documentation, or licensing extends substantially the same fishing privileges for a fishery to vessels of the United States. Notwithstanding any other provision of law, the Secretary of State, with the concurrence of the Secretaries of the Treasury and of the Interior, may permit a vessel, other than a vessel of the United States, owned or operated by an international organization of which the United States is a member, to engage in fishery research within the territorial waters of the United States or within any waters in which the United States has the same rights in respect to fisheries as it has in its territorial waters, or for resources of the Continental Shelf which appertain to the United

States and to land its catch in a port of the United States in accordance with such conditions as the Secretary may prescribe whenever they determine such action is in the national interest.]
That (a) it is unlawful for any vessel, except a vessel of the United States, or for any master or other person in charge of such a vessel, to engage in fishing—

(1) within the territorial waters of the United States, its territories and possessions, and the Commonwealth of Puerto Rico;

(2) within the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975 unless such fishing is authorized under a permit issued pursuant to section 201 of such Act;

(3) for any anadromous species beyond such fisheries conservation and management zone for which a fishery management plan has been implemented under title III of such Act of 1975 unless such fishing is authorized under a permit issued pursuant to section 201 of such Act of 1975; and

(4) for any Continental Shelf fishery resource.

(b) Notwithstanding any other provision of law, the Secretary of Commerce, with the concurrence of the Secretary of State, may permit a vessel, other than a vessel of the United States, owned or operated by an international organization of which the United States is a member, to engage in fishery research within the territorial waters of the United States or within the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975 or for Continental Shelf fisheries resources and to land its catch in a port of the United States in accordance with such conditions as the Secretary may prescribe whenever they determine such action is in the national interest.

* * * * *

SEC. 5. (a) As used in this Act, the term "Continental Shelf fishery resource" includes the living organisms belonging to sedentary species; that is to say, organisms which, at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil of the Continental Shelf.

(b) The Secretary of the Interior in consultation with the Secretary of State is authorized to publish in the Federal Register a list of the species of living organisms covered by the provisions of subsection (a) of this section.

(c) As used in this Act, the term ["fisheries"] "fishing" means the taking, planting, or cultivation of fish, mollusks, crustaceans, or other forms of marine animal or plant life by any vessel or vessels; and the term "fish" includes mollusks, crustaceans, and all other forms of marine animal or plant life.

(d) As used in this Act, the term "Continental Shelf" refers (a) to the seabed and subsoil of the submarine areas adjacent to the coast but outside the area of the territorial sea, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of the said areas; (b) to the seabed and subsoil of similar submarine areas adjacent to the coasts of islands.

SECTION 2(4) OF THE ATLANTIC TUNAS CONVENTION ACT OF 1975
(Public Law 94-70)

SEC. 2. For the purpose of this Act—

* * * * *

(4) The term "fisheries zone" means [the entire zone established by the United States under the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094),] *the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975*, or similar zones established by other parties to the Convention to the extent that such zones are recognized by the United States.

SECTION 3(15)(B) OF THE MARINE MAMMAL PROTECTION ACT OF 1972
(86 Stat. 1029; 16 U.S.C. 1362(15)(B))

SEC. 3. For the purposes of this Act—

* * * * *

(15) The term "waters under the jurisdiction of the United States" means—

(A) the territorial sea of the United States, and

(B) [the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091-1094).] *the fisheries conservation and management zone established by title I of the Marine Fisheries Conservation Act of 1975*.

APPENDIX I

A PRELIMINARY LISTING OF MARINE FISHERY RESOURCES WHICH ARE DEPLETED, IN IMMINENT DANGER OF DEPLETION, OR UNDER INTENSIVE USE

(Prepared by the National Marine Fisheries Service, NOAA, Department of Commerce, August 1975)

A. Table I-1 was prepared in order to detail fishery resources for which the Secretary of Commerce would be required to prepare management plans following enactment of H.R. 200, *The Marine Fisheries Conservation Act of 1975*, as explained in Section 308(a). The condition of a species or species group is designated as:

(1) "depleted" if maximum sustainable yield (MSY) has been exceeded and yields are currently less than MSY;

(2) in "imminent danger" if MSY has been reached but no decrease in yield has been observed and if the fleets operating in an area have sufficient fishing power to cause depletion of the resource;

(3) under "intensive use" if MSY is being approached.

Dashes between two designations are used to indicate the range of designations which could be applied to a species or species group in a given area when no single designation is appropriate. Slashes between two designations indicate a border line case. The reference to "unregulated because of the absence of management authority * * *", contained in Section 308(a), is difficult to interpret. Species or species groups for which fisheries are currently regulated are indicated by footnote, but no assumptions, concerning management authority or regulations at the time of enactment, were made in designating a species or group as being under "intensive use". General notes following the list provide additional information which may be useful in its interpretation.

TABLE I-1

I. Northwest Atlantic and Middle Atlantic Bight (Canadian border to Virginia-North Carolina border)

Species/species group	Condition
Finfish:	
American dab (american plaice) ^{1 2} -----	Intensive Use.
Black sea basses ^{3 4 5 6} -----	Do.
Bluefish ^{3 4 5 6 14} -----	Do.
Cod ^{1 2} -----	Intensive use/Imminent danger.
Flukes ^{3 4 5 6 14} -----	Imminent danger.
Grey sole (witch flounder) ^{1 2} -----	Do.
Haddock ^{1 2} -----	Depleted.
Mackerel ^{2 6} -----	Imminent danger.
Menhaden ^{3 4 5 6 15} -----	Depleted.
Ocean perch (redfish) ^{1 2} -----	Intensive use.
Scups or porgies ^{3 4 5 6} -----	Do.
Red hake ^{2 3 4 5 6} -----	Imminent danger.
Sea herring (Atlantic herring) ^{2 3 6} -----	Depleted.
Silver hake ^{2 3 4 5 6} -----	Intensive use.
Winter flounder ^{1 2} -----	Imminent danger.
Yellowtail flounder ^{2 3 4 5 6} -----	Depleted.

See footnotes at end of table.

TABLE I-1—Continued

<i>Species/species group</i>	<i>Condition</i>
Shellfish:	
American lobster ^{3 5 6 14 15}	Intensive use.
Blue crab ¹⁴	Do.
Hard clams ¹⁴	Do.
Oysters ¹⁴	Intensive use— depleted.
Softshell clam ¹⁴	Intensive use.
Pandalid shrimps ^{14 15}	Depleted.
Sea scallop ²	Do.
Surf clam ¹⁵	Intensive use.

II. Southeast U.S. coast (Virginia-North Carolina border to Florida Keys east of 81° W. long.)

<i>Species/species group</i>	<i>Condition</i>
Finfish:	
Atlantic mackerel ^{2 6}	Imminent danger.
Menhaden.....	Depleted.
Shellfish:	
Shrimps ¹⁴	Intensive use.
Spiny lobster ¹⁴	Do.
Stone crab ¹⁴	Do.

III. Gulf of Mexico (Florida west of 81° W. long. to Mexican border)

<i>Species/species group</i>	<i>Condition</i>
Finfish:	
Groupers.....	Intensive use.
Menhaden ¹⁵	Do.
Snappers.....	Do.
Shellfish:	
Oysters ¹⁴	Intensive use—depleted.
Shrimps ^{14 15}	Imminent danger.
Spiny lobster ¹⁴	Intensive use.
Stone crab.....	Do.

IV. Southwest U.S. coast (Cape Mendocino, Calif., south to Mexican border)

<i>Species/species group</i>	<i>Condition</i>
Finfish:	
Pacific barracuda ¹⁴	Imminent danger— depleted.
California yellowtail ¹⁴	Intensive use.
Hake (Pacific hake) ^{3 6}	Imminent danger— depleted.
Pacific Bonito.....	Imminent danger.
Pacific mackerel ^{4 14}	Depleted.
Pacific sardine ¹⁴	Do.
Rockfishes (including Pacific Ocean perch) ^{3 4 6 14}	Intensive use.
Sea herring (Pacific herring) ^{3 8 14}	Do.
White sea bass ¹⁴	Do.
Shellfish:	
Abalones ¹⁴	Intensive use—depleted.
Dungeness crabs ^{14 15}	Intensive use.
Pismo clam ¹⁴	Intensive use—depleted.
Shrimps ¹⁴	Do.
Spiny lobster ¹⁴	Imminent danger.

See footnotes at end of table.

TABLE I-1—Continued

V. Northeast Pacific (Cape Mendocino, Calif., north to Canadian border)

<i>Species/species group</i>	<i>Condition</i>
Finfish:	
Cod (Pacific cod).....	Intensive use.
Flounders (Pacific flounders and soles) ^{4 6}	Do.
Hake (Pacific hake) ^{3 6}	Imminent danger— depleted.
Halibut (Pacific halibut) ^{3 4 7 8 12 14}	Depleted.
Rockfishes (including Pacific Ocean perch) ^{3 4 6}	Imminent danger— depleted.
Sablefish (black cod) ^{3 4}	Intensive use.
Shellfish:	
Dungeness crabs ^{14 15}	Do.
Razor clams ¹⁴	Do.
Shrimps (Pandalid shrimps) ¹⁴	Do.

VI. Alaska

<i>Species/species group</i>	<i>Condition</i>
Finfish:	
Alaska pollock ³	Depleted.
Flounders ^{4 6} (Bering Sea only).....	Do.
Halibut ^{3 4 7 8 12 14}	Do.
Pacific cod.....	Imminent danger.
Rockfishes (including Pacific Ocean perch) ^{3 4 6}	Imminent danger— depleted.
Sablefish (black cod) ^{3 4}	Imminent danger.
Shellfish:	
Dungeness crab ¹⁴	Intensive use.
King crab ^{3 6 14}	Do.
Shrimps ^{4 14}	Do.
Tanner crabs ^{3 6 14} (Gulf of Alaska).....	Do.

VII. Insular fisheries of the Caribbean

Species lists to be developed.

VIII. Insular fisheries of the Pacific

Species lists to be developed. (Most coastal Hawaiian stocks are depleted.)

IX. Highly migratory species

<i>Species/species group</i>	<i>Condition</i>
Finfish:	
Albacore.....	Intensive use.
Bluefin tuna ¹⁰ (both Atlantic and Pacific).....	Imminent danger— depleted.
Yellowfin tuna ¹⁰ (Atlantic).....	Intensive use.
Yellowfin tuna ⁹ (Pacific).....	Imminent danger.

See footnotes at end of table.

TABLE I-1—Continued

X. Anadromous species

Species/species group	Condition
Alewife (a river herring) ^{3 5 6 14}	Depleted.
American shad (a river herring) ^{3 5 6 14}	Intensive use—depleted.
Atlantic salmon	Depleted.
Blueback herring (a river herring) ^{3 5 6 14}	Do.
Hickory shad (a river herring) ^{3 5 6 14}	Intensive use—depleted.
Pacific salmon ^{3 4 8 11 12 14}	Do.
Sea run trout ¹⁴	Do.
Striped bass ¹⁴	Do.

NUMBERED NOTES

- Regulations applying to various species and species groups under:
- ¹ International Commission for the Northwest Atlantic Fisheries. U.S. participates in management planning, but does not normally participate in fisheries in Areas 0, 1, 2, 3.
- ² International Commission for the Northwest Atlantic Fisheries.
- ³ United States-Japan bilateral agreements.
- ⁴ United States-Poland bilateral agreement.
- ⁵ United States-Romania bilateral agreement.
- ⁶ U.S.-U.S.S.R. bilateral agreements.
- ⁷ International Pacific Halibut Commission, and the Halibut Convention.
- ⁸ International North Pacific Fisheries Commission.
- ⁹ Inter-American Tropical Tuna Commission.
- ¹⁰ International Commission for the Conservation of Atlantic Tunas.
- ¹¹ International Pacific Salmon Fisheries Commission.
- ¹² United States-Korea bilateral agreement.
- ¹³ United States-Brazil bilateral agreement.
- ¹⁴ Various State regulations apply to this group.
- ¹⁵ Cooperative State/Federal management plans exist or are currently being formulated.

GENERAL NOTES

- a. Species or groups of species found within 200 miles of U.S. shores and included in bilateral agreements or regulations of international commissions are arbitrarily included (exceptions: Anchovy, Argentines, sea snails).
- b. Species regulated under "other finfish" in ICNAF regulations, but not identified by species or species group are not listed.
- c. There are some differences between the terminology used in EJ-75-14 (list of species by fisheries category) and EJ-75-16 (regulations in effect Under Fisheries Management Plans Established Under Treaties and Bilateral Agreements to which the United States is Party, July 1, 1975). Terminology of EJ-75-16 is inserted parenthetically in the above listing.
- d. Marine mammals, birds, reptiles, and plants are not considered.

B. Table I-2 used in conjunction with Table I-1 permits determination of the degree of foreign versus domestic exploitation of various fish stocks.

TABLE I-2.—GENERAL STATUS OF KNOWLEDGE FOR MAJOR SPECIES OR SPECIES GROUPS OF THE U.S. MARINE FISHERY RESOURCE

Species/group	General locality	Ranking	
		Catch/effort	Catch equation and/or MSY estimates
Group I. Exploited primarily by foreign fleets:			
Atlantic mackerel ^{1 4}	Northwest Atlantic	3	3
Red hake ¹	do	3	3
Silver hake ¹	do	3	3
Herring ¹	do	3	3
River herrings ^{1 3 4}	do	3	3
Squids ¹	do	3	1
Pacific cod	Northeast Pacific	2	2
Pacific hake	do	2	2
Herring ²	do	2	3
Ocean perch ²	do	3	3
Alaska pollock ²	do	3	3
Sablefish ²	do	3	3
Tanner (snow) crab	do	3	1
Group II. Exploited by domestic and foreign fleets:			
Atlantic Cod ^{1 4}	Northwest Atlantic	3	3
Atlantic Ocean Perch ¹	do	3	2
Haddock ^{1 4}	do	3	4
Winter flounder ^{1 4}	do	3	1
Other flounders ¹	do	3	1
Scup or porgy ⁴	Northwest Atlantic and West-central Atlantic	2	1
Flounders ³	Northeast Pacific	2	2
Halibut	do	3	3
Rockfishes ³	Northeast Pacific and East Central Pacific	3	2

See footnotes at end of table.

TABLE I-2.—GENERAL STATUS OF KNOWLEDGE FOR MAJOR SPECIES OR SPECIES GROUPS OF THE U.S. MARINE FISHERY RESOURCE—Continued

Species/group	General locality	Ranking	
		Catch/effort	Catch equation and/or MSY estimates
Group III: Exploited primarily by domestic fleets:			
Bluefish ⁴	Northwest Atlantic	2	1
Drums and croakers ⁴	do	2	1
Sea trout ⁴	do	2	1
Spot ⁴	do	2	1
Striped bass ⁴	do	3	1
Summer flounder ^{1 4}	do	2	1
White Hake ¹	do	3	2
Yellowtail flounder ¹	do	3	3
Menhaden	do	4	3
Bluefish ⁴	West-central Atlantic	2	1
Drums and croakers ⁴	do	2	1
Flounders ⁴	do	2	1
Menhaden	do	4	3
King mackerels ⁴	do	2	1
Mullet	do	3	1
Scup	do	2	1
Snappers/groups ⁴	do	2	1
Spot ⁴	do	2	1
Sea trout ⁴	do	2	1
Striped bass ⁴	do	3	1
Group III: Exploited primarily by domestic fleets:			
California anchovy	East central Pacific	1	3
California sardine	do	4	1
Flounders ⁴	do	3	3
Jack mackerel ⁴	do	1	3
Pacific mackerel ⁴	do	1	1
Crabs	Northwest Atlantic	3	3
Lobsters	do	3	2
Scallops	do	3	2
Shrimps	do	2	1
Surf clams	do	4	2
Hard clams	do	2	2
Oysters	do	4	1
Crabs	West central Atlantic	3	2
Hard clams	do	1	1
Lobsters	do	1	2
Oysters	do	4	1
Scallops	do	3	1
Shrimps ⁴	do	3	2
Crabs	East central Pacific and Northeast Pacific	3	2
King crab	Northeast Pacific	3	4
Shrimps	do	4	3
Group IV: Highly Migratory and Anadromous Species Exploited Primarily by Domestic Fisheries:			
Pacific salmon:			
Chinook ⁴	do	4	2
Chum	do	4	2
Coho ⁴	do	4	2
Pink	do	4	2
Sockeye	do	4	2
Tunas, Pacific:			
Albacore	East central Pacific	3	1
Bigoeye	do	3	1
Bluefin	do	1	1
Skipjack	do	3	2
Yellowfin	do	3	3
Tunas	East Central Atlantic	3	3
Tunas ⁴	West central Atlantic and Northwest Atlantic	3	3

- ¹ Total allowable catches (TAC's) are now assigned under ICNAF agreements.
- ² TAC established under United States-Japan bilateral negotiations.
- ³ TAC established under U.S.-U.S.S.R. bilateral negotiations.
- ⁴ There are substantial recreational fisheries for these species/groups; catch and effort data are largely unavailable from these fisheries; data should be used with caution.

Explanation of ranking

Catch/effort data:	Rank
Adequate	4
Preliminary	3
Some data available	2
No data	1
Catch equation production model (C/E equation) and/or MSY estimate:	
Adequate	4
Preliminary	3
Data available	2
No data	1

SUPPLEMENTARY VIEWS ON H.R. 200

Though I am in support of H.R. 200, I believe the Committee should assume an obligation to review a very important problem relating to the protection of our fishery resources. H.R. 200 as reported excludes from the coverage of the bill highly migratory species of fish. These species include not only tuna, but also all billfish—marlins, swordfish and sailfish. The billfish are important both in terms of their economic value and their special value to sport fishing.

Sport fishing is one of the most important resources in our coastal areas. It is estimated that there are some 34 million anglers fishing in our U.S. oceans. United States sport fishing each year is a \$2.6 billion industry.

There are two basic reasons offered in excluding the prime catch of sport fishermen from H.R. 200. First, many of the highly migratory species are under the jurisdiction of international fishery agreements. Second, these species are not threatened by overfishing. I believe both of these premises are open to serious question.

Virtually all international fisheries organizations are presently beset by serious deficiencies. They are not constituted with sufficient legal authority and enforcement capacity to manage the fishery, and therefore have no real control. They also are least likely to be effective in those situations where exploitation pressure is greatest.

The second problem is the very disturbing evidence of the decline in the stock of various highly migratory species. Data indicates that after remaining constant for some 20 years, the catch of bluefin tuna in all Atlantic waters has declined some 70 percent since 1964. Comparative data from U.S. purse seine fisheries, Japanese longline statistics and the U.S. recreation catch indicates that western Atlantic stocks are now exhibiting a similar decline to that seen in the eastern Atlantic, but at an earlier stage. The catch rate for blue marlin has declined 92 percent between 1956 and 1970. The catch rate for white marlin has dropped 61 percent between 1962 and 1970.

Another premise advanced for excluding highly migratory species of fish from H.R. 200 is that this could be used to our advantage in future treaty negotiations. This argument does not, however, apply to billfish. It also appears to rest on the assumption of treaty negotiations involving foreign nations desiring to fish for these highly migratory species in U.S. waters, which is not the case.

I believe the Committee should assume the responsibility for careful oversight of the serious problems facing billfish and other highly migratory species. In my judgment we must not ignore this vast segment of U.S. fishery resources in our work to perfect H.R. 200.

Bo GINN.

(100)

DISSENTING VIEWS ON H.R. 200

I strongly support the general thrust of this bill which is to give our American fishermen the protection of the federal government from overfishing by fishermen of other nations. This has become a very serious problem in recent years in light of the inability of international negotiations on this subject to produce results even while most nations agree on the need for an expansion of national jurisdictions in the fishing area. I have co-sponsored legislation to declare the waters contiguous to the territorial sea a federal fisheries zone out to 200 miles from the coast.

I cannot, however, support this bill because it also extends federal jurisdiction over waters that are traditionally under the jurisdiction of the states. I do not agree with those who feel that federal management of fisheries within the territorial sea is necessary to protect American fishermen against predatory practices of fishermen of other nations, and I certainly do not regard it as desirable. The states have done an excellent job of managing species within the area of their jurisdiction. The Wildlife and Fisheries Commission of my home state of Louisiana spends more funds on the management of shrimp in Louisiana waters alone than the National Marine and Fisheries Service spends on the management of *all* species in the Gulf of Mexico. I do not believe that there is any basis for giving the Secretary of Commerce the power to unilaterally declare, without further Congressional action, that state action or inaction has so substantially and adversely affected the carrying out of federal management activities beyond the territorial sea that fishing within state waters will thereafter be subject to federal regulation. I am pleased that my colleagues agreed to amendments to clarify the language of the bill as reported by the Subcommittee, which could have been construed as extending federal jurisdiction to the internal waters of the state far shoreward of the coastline. I believe that the same principles that made such an amendment in Committee desirable make the striking of Section 309 (b) and (c), with a conforming amendment to (a), preferable. State practices within the coastline are just as likely to affect the federal programs in the contiguous zone as are state practices within the territorial sea. Why should not the traditional boundary of the territorial sea be maintained?

I question the very constitutionality of this proposal, which is violative of the rights reserved to the states by the Tenth Amendment. I believe that those members who discuss this portion of the bill with their state fish and wildlife management agencies and with their commercial and sport fishermen will find great opposition to this transfer of management authority. This opposition will undermine the cooperation which will be necessary if underfinanced federal efforts to maintain a management program in the contiguous zone is to succeed.

DAVID C. TREEN.

(101)

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FISHERIES MANAGEMENT AND CONSERVATION
ACT



NOVEMBER 18, 1975.—Ordered to be printed

Mr. SPARKMAN, from the Committee on Foreign Relations,
submitted the following

REPORT

together with

ADDITIONAL AND SUPPLEMENTAL VIEWS

[To accompany S. 961]

The Committee on Foreign Relations, to which was referred the bill (S. 961) to extend on an interim basis the jurisdiction of the United States over certain areas and fish in order to protect the domestic fishing industry, and for other purposes, having considered the same, reports unfavorably thereon and recommends that the bill do not pass.

PURPOSE

The primary purposes of this legislation are: (a) to unilaterally extend U.S. fishery jurisdiction from 12 miles to 200 miles on an interim basis to protect the domestic fishing industry; (b) to extend U.S. control over anadromous fish (salmon) wherever they may range on the high seas; and (c) to establish a national fishery management program.

BACKGROUND

For centuries, high seas fisheries have grown under the internationally recognized principle of "freedom of the seas." Under this doctrine, most coastal nations have maintained relatively narrow territorial or jurisdictional zones beyond which fishermen have had largely unfettered rights to exploit fishery resources.

As long as fishing methods were primitive and fleets relatively small, most international fishing interests were adequately accommodated without threatening the actual supply of fish. However, the development of modern techniques and the absence of effective conservation measures have caused a number of nations to develop serious concerns about the survival of their local fishing grounds. Although there exist

a number of international conventions to conserve the living resources of the oceans, most of these agreements have proven ineffective in controlling the problem of over-exploitation. Consequently, more and more nations are extending their jurisdictions to preserve the fishery resources off their coasts. Since 1948, approximately 40 nations have unilaterally declared exclusive fisheries zones beyond the 12-mile limit.

The United States has historically recognized a 3-mile territorial sea and, in 1966, unilaterally declared a 9-mile contiguous zone of exclusive jurisdiction over fisheries (Public Law 89-658). At the present time, the federal government exercises jurisdiction in the zone between the 3 and 12-mile limits, while the states regulate fishing within the 3-mile territorial sea.

Since 1973, approximately 140 nations, through the United Nations Law of the Sea Conference, have been meeting in an attempt to reach an agreement governing all the various uses of the oceans and their resources, including fisheries and mineral jurisdiction, pollution control, and navigation rights. Progress at that Conference has been disappointingly slow, and there are serious doubts whether these negotiations can be completed by 1977.

The current U.S. fisheries negotiating position endorses a 200-mile coastal state "economic resource zone." This proposal would grant the coastal state effective regulatory and economic control over coastal species within a 200-mile zone, subject to international standards and review regarding conservation. Under the U.S. proposal, the coastal state would be permitted to reserve to its own vessels that portion of the allowable annual catch which they can harvest. The coastal state would also be expected to permit, for a reasonable fee, the taking of the remainder by foreign fishermen who have traditionally fished in that area. Any fishery regulations promulgated by coastal states for their "economic zones" could be challenged by other nations and made subject to compulsory dispute settlement or arbitration. Under the U.S. proposal, anadromous stocks (salmon) would be managed by the nation in whose streams and rivers they spawn. Highly migratory species, such as tuna, would be regulated by appropriate international agencies.

In the past, the U.S. Law of the Sea fisheries position has been unanimously supported by the U.S. fishery industry. However, in light of the fact that 14 U.S. coastal commercial fish species have been depleted in recent years, fishing interests along the Atlantic Coast and the Pacific Northwest are convinced that the Law of the Sea Conference will not provide them with timely relief from foreign fishing pressures. These interests along with various labor and environmental organizations are urging the passage of S. 961. On the other hand, the American tuna and shrimp industries which fish off the East and West Coasts of Latin America adamantly oppose this legislation.

EXECUTIVE BRANCH VIEWS

The executive branch strongly opposes any unilateral extension of U.S. jurisdiction over fisheries on an interim or any other basis. The Administration's basic position was set forth by Secretary Kissinger in a speech concerning the problems facing the United Nations Third

Conference on the Law of the Sea, delivered to the American Bar Association's Annual Convention in Montreal on August 11, 1975:

The urgency of the problem is illustrated by disturbing developments which continue to crowd upon us. Most prominent is the problem of fisheries.

The United States cannot indefinitely accept unregulated and indiscriminate foreign fishing off its coasts. Many fish stocks have been brought close to extinction by foreign over-fishing. We have recently concluded agreements with the Soviet Union, Japan, and Poland which will limit their catch and we have a long and successful history of conservation agreements with Canada. But much more needs to be done.

Many within Congress are urging us to solve this problem unilaterally. A bill to establish a 200-mile fishing zone passed the Senate last year; a new one is currently before the House.

The Administration shares the concern which has led to such proposals. But unilateral action is both extremely dangerous and incompatible with the thrust of the negotiations described here. The United States has consistently resisted the unilateral claims of other nations, and others will almost certainly resist ours. Unilateral legislation on our part would almost surely prompt others to assert extreme claims of their own. Our ability to negotiate an acceptable international consensus on the economic zone will be jeopardized. If every state proclaims its own rules of law and seeks to impose them on others, the very basis of international law will be shaken, ultimately to our own detriment.

Some of the primary arguments against the passage of S. 961 set forth by the Administration witnesses during the Subcommittee hearings are as follows:

The United States' fisheries concerns can best be met in the context of international agreements. The President, in a message delivered to the September 1975 meeting of the International Commission for the Northwest Atlantic Fisheries (ICNAF), pledged "the full support of the United States to sound fisheries management and conservation practices, based on scientific evidence and implemented within the framework of internationally negotiated agreements." As evidence that such agreements can be attained, the Administration points out that the 1975 ICNAF agreement covering an area from Maine to North Carolina will reduce the overall 1976 fishing quotas by 23 percent.

Unilateral extensions of fisheries jurisdiction have, in the past, led to or encouraged more extreme jurisdictional claims. The Administration believes that such claims would have an adverse impact on a broad range of U.S. oceans interests including commercial navigation (affecting vital energy needs) and national security (requiring naval mobility for our general purpose and strategic deterrent forces).

A unilateral extension of United States fisheries jurisdiction could seriously injure important United States tuna and distant water shrimp fishermen who operate within 200 miles of other nations. The value of tuna landings alone by U.S. fisheries off foreign shores exceeds \$138 million per year. The Administration believes that such a uni-

lateral extension could increase the likelihood of disputes with the states off whose coasts those fisheries are conducted.

Enforcement of a unilateral 200-mile United States fisheries claim against the Soviet Union and other nations fishing off our coasts could pose a risk of confrontation or retaliation against United States economic interests which could not be solved by negotiation.

In order to implement a satisfactory enforcement plan, the Coast Guard estimates that a minimum expenditure of \$63.2 million in acquisition and reactivation costs and \$47.2 million in annual operating funds (based on 1975 fiscal dollars) would be required.

Unilateral claims might make it far more difficult to conclude a satisfactory Law of the Sea Treaty involving a broad range of U.S. oceans and foreign relations interests. The likely outcome of such a treaty—which the U.S. supports—is the establishment of a 200-mile economic zone in which our fisheries and other oceans interests are protected. Accordingly, the Administration believes unilateral action could seriously jeopardize international recognition of precisely that which it is intended to achieve.

It is the concern of the State Department that a unilateral claim would be a serious setback to the development of international legal institutions and the rule of law in the oceans, since it is generally agreed that a unilateral extension of U.S. fisheries jurisdiction to 200 miles would be inconsistent with existing international law.

CONGRESSIONAL ACTION

On December 11, 1974, the Senate by a vote of 68 to 27 passed S. 1988, the Emergency Marine and Fisheries Protection Act of 1974, which extended U.S. jurisdiction over fishing from 12 to 200 miles. Although the House Merchant Marine Committee held extensive hearings during the 93rd Congress, it failed to report a similar bill (H.R. 8665).

During the 94th Congress, on October 7, 1975, the Senate Commerce Committee favorably reported S. 961, the Fisheries Management and Conservation Act. The bill was referred to the Foreign Relations Committee for 21 days of Senate sessions.

On October 9, 1975, the House passed H.R. 200, the Marine Fisheries Conservation Act of 1975, by a vote of 208 to 101. This bill, although different from S. 961, extends on an interim basis the jurisdiction of the United States over certain ocean areas and fish in order to protect the domestic fishing industry.

On October 31, 1975, the Subcommittee on Oceans and International Environment of the Foreign Relations Committee held a public hearing on S. 961. At that time, testimony in support of the bill was presented by Senator Warren G. Magnuson (D. Wash.) and Representatives Gerry Studds (D. Mass.), Joel Pritchard (R. Wash.), and Don Young (R. Alaska).

Testimony in opposition to the bill was delivered by Senator Mike Gravel (D. Alaska); Representative Paul N. McCloskey (R. Calif.); Carlyle E. Maw, Under Secretary of State for Security Assistance; and John Norton Moore, Chairman, NSC Inter-Agency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference.

On October 13, 1975, the Foreign Relations Committee met to consider S. 961 in an open session. At that time, the Committee adopted by a vote of 7 to 6 a motion to report S. 961 adversely. Those voting aye were Senators McGee, Humphrey, Clark, Javits, Scott of Pennsylvania, Percy, and Griffin. Those voting nay were Senators Mansfield, Symington, Pell, McGovern, Biden, and Pearson.

COMMITTEE COMMENTS AND RECOMMENDATIONS

After thoroughly considering all the testimony presented on this issue, the Committee voted (7 to 6) to report S. 961 unfavorably to the Senate. Although sympathetic with the concerns of the sponsors of S. 961 for the welfare of the U.S. coastal fishermen, the majority of the Committee believes that the best protection for their livelihoods and the most effective long-term solution to our fishery problems is a timely ocean law treaty.

The Committee was of the opinion that to adopt S. 961 at this time would be inconsistent with the spirit of existing U.S. international legal obligations, particularly the 1958 Convention on the High Seas which specifically identifies freedom of fishing as an essential element of the overall high seas freedoms. Forty-six nations have signed this Convention and the United States, since 1966, has consistently opposed all other unilateral claims on the basis that they are violations of international law. The Committee believes that the drastic reversal of our position called for in S. 961 might seriously subvert U.S. credibility on all future ocean issues and negotiations.

Specifically, the Committee is concerned that S. 961 might undermine the current efforts of the Third United Nations Law of the Sea Conference to reach a comprehensive multilateral agreement on these and other marine problems. The third substantive session of this Conference is scheduled to meet next March and April and hopes to complete its work on this treaty by the end of 1977. If the Conference is permitted to complete its task, there is strong indication that a 200-mile economic zone will be established which will fully protect U.S. coastal fishery interests. Should the Conference fail, there will be more than enough time to take unilateral action to protect our coastal resources. Therefore, the Committee recommends that the Senate not pass S. 961 at this time.

MAJOR PROVISIONS OF S. 961

Section 101 extends U.S. fishery jurisdiction from 12 miles to 200 miles over all coastal species. This section also gives the U.S. management authority over anadromous species (salmon) throughout their migratory range except within the territorial waters or contiguous zone of another nation.

Section 102 permits foreign fishermen, who have traditionally fished in U.S. waters, to catch stocks which are not fully exploited by U.S. fishermen. It provides that this catch shall not exceed the optimum yield for such stocks, and limits this right to those foreign fishermen whose countries provide reciprocal rights to U.S. fishermen.

Section 103 authorizes the Secretary of State to enter into bilateral and multilateral agreements to carry out the purposes of this bill. It directs the Secretary of State to review existing agreements and to

initiate negotiations to revise those provisions in existing agreements inconsistent with this bill.

Section 104 provides that the jurisdictional sections of this bill would expire, and cease to be of any legal effect, on the date that a Law of the Sea Treaty (or other comprehensive treaty, convention, or agreement with respect to fishery jurisdiction, which the United States has signed or is a party to) comes into force or is provisionally applied by the United States.

Section 201 sets forth the national standards for fishery management and conservation. These apply to management and conservation measures affecting fishing in the fishery conservation zone, for anadromous species and for Continental Shelf fishery resources.

Section 202 establishes seven Regional Fishery Management Councils which are charged with the responsibility of preparing management plans and recommending management regulations to the Secretary for fisheries in the various regions of the country.

Section 204 establishes an appellate body, theoretically comparable to the judicial branch, the Fishery Management Review Board. The purpose of this Board is to provide an independent review of disputes (1) which may arise between the individual Councils and the Secretary and (2) relating to the application of management regulations, issuance or denial of licenses, and so on.

Section 304 authorizes \$22 million annually for 2¼ fiscal years for the Department of Commerce to carry out this bill. This section also authorizes \$13 million annually for 2¼ fiscal years for the Department in which the Coast Guard is operating to carry out the enforcement provisions of this bill.

ESTIMATED COSTS

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the cost of this Act for which appropriations are authorized will be as follows:

	(In thousands)		
	Fiscal year 1976	Transitional quarter	Fiscal year 1977
To the Secretary of Commerce.....	\$22,000	\$5,500	\$22,000
To the Secretary of the Department in which the Coast Guard is operating.	13,000	3,250	13,000

However, it should be noted that in order to implement a satisfactory enforcement plan envisioned by this bill, the Coast Guard estimates that a minimum expenditure of \$63.2 million in acquisition and reactivation costs and \$47.2 million in annual operating funds (based on 1975 fiscal dollars) would be required.

ADDITIONAL VIEWS

As a New England coastal state Senator resolutely committed to looking after the well-being of the United States coastal fisherman, I believe it particularly necessary to present these additional views strongly supporting the passage of S. 961.

For most of my Senate career, I have closely followed and participated in the development of U.S. ocean policies and, particularly, the preparations aimed at negotiating an international legal agreement governing the myriad uses of the oceans. As a Senate advisor to the U.S. Delegation to the preparatory and substantive sessions of the Third United Nations Law of the Sea Conference, I have had an opportunity to discuss the progress and probability of success of this Conference with both U.S. and foreign diplomats.

As do most of the sponsors of S. 961, I believe that, ideally, a multilateral agreement is the best solution to the numerous problems and conflicts associated with ocean space. In this connection, I am gratified that a substantial consensus has been achieved in the Conference for the establishment of a 200-mile economic zone. Under the comprehensive approach being taken in the Conference, agreement on an economic zone is being held up by disagreements in other areas, particularly the question of deep sea mining. However, it would be naive to assume that the only tumbling block to the conclusion of a multilateral treaty on the Law of the Sea is the negotiation of a regime and machinery applicable to the exploration and exploitation of deep seabed resources. The Conference has become ensnared in ideologically-based inflexibility. It has become one of the central forums for the promotion of the Third World's "new economic order." Consequently, it is highly doubtful whether sufficient political will exists which can successfully overcome these difficulties and complete the negotiations on a comprehensive basis at an early date. In light of the uncertainty of the outcome of the Conference, it would be folly for the United States to ignore its vital national interests and to permit the further depletion of its coastal fishery resources.

There is no doubt the problem is acute. The fishery resources off our coasts have been grievously overexploited by massive foreign fishing activities. The volume of fish taken off the U.S. coast has increased dramatically from approximately 4.4 billion pounds in 1948 to 11.6 billion pounds in 1973. Throughout this 25-year time span, the landings of U.S. vessels have remained virtually constant while the foreign catch in U.S. coastal waters increased to an annual level of 7.9 billion pounds, a figure representing nearly 70 percent of the commercial U.S. coastal fish harvest.

In the same 25-year period, consumption of fish products in the United States has more than doubled, from 3.1 billion pounds in 1948 to 7 billion pounds in 1973. Under existing growth patterns, this figure could increase by an additional 3 billion pounds by 1985. Nearly the entire growth in U.S. fish consumption has been supplied by imports

that are often harvested in U.S. coastal waters by foreign fishing fleets, processed in the home port of the foreign fishing vessel, and exported for sale to the United States.

Today, the United States imports over 60 percent of its fish products needs. In 1974, the U.S. balance of trade deficit in fishery products alone amounted to nearly \$1.5 billion. It has been estimated that if imports of foreign fishery products were replaced by domestic production, the additional economic impact on the U.S. economy would approach \$3 billion and result in an increase of 200,000 man-years in employment.

As a result of virtually unrestrained harvesting of U.S. coastal fishery resources, particularly by large-scale foreign fishing fleet operations, at least 14 fish species of interest to U.S. fishermen have been overfished and the continued economic viability of others has been threatened. These statistics dramatize the importance and significance of fishery resources to the United States and indicate that positive action is necessary to protect and conserve these resources.

In New England, the problem is particularly acute. Since the early 1960s foreign fishing has shrunk the overall fish biomass in the North-west Atlantic by 50 percent. The National Marine Fisheries Service indicates that Atlantic haddock, herring, menhaden, yellowtail flounder and halibut have been severely depleted, some to the point where they may never recover. Although the United States is party to a large number of international fishery conservation conventions, these agreements are and will continue to be woefully inadequate in containing or preventing overexploitation. Fundamental defects in enforcement, data gathering, and the protection of single species weaken all these agreements.

I would particularly like to emphasize the enforcement problem which S. 961 is intended to correct. Under the International Convention for the North Atlantic Fisheries (ICNAF), the United States can board foreign vessels but cannot take any punitive action in the event of violation. Such action is reserved to the flag states of the offending vessels. The following statistics on recent violations, provided by the National Marine Fisheries Service illustrate the seriousness of the problem.

- In 1974 U.S. agents boarded 11 of 14 West German trawlers in one ICNAF area and discovered that the German herring quota for that area had been exceeded by 40%.
- In 1974 U.S. agents boarded 6 of 8 U.K. trawlers on Georges Bank and discovered that the vessels had been fishing for haddock in spite of the fact that ICNAF granted no haddock quotas for 1974 other than for allowable incidental catch. Nets with undersize mesh were also being used by the vessels.
- In 1974, the U.S. accused Spain of exceeding its cod quota on Georges Bank and for taking haddock contrary to ICNAF regulations.
- From Jan. to April of 1975, boardings and aerial surveillance of Soviet mackerel trawlers off southern New England indicated that the USSR was exceeding its 1975 mackerel quota by an estimated 70%.

It has been estimated that U.S. coastal waters contain upward of 20 percent of the world's living resources. Positive U.S. action, em-

bodied in S. 961, to protect and conserve these resources pending an international settlement on the question of coastal state jurisdiction over fishery resources will not only protect these resources for the United States but also for the world community at large.

Administration witnesses stated that the United States has consistently resisted all unilateral claims in the oceans and that S. 961 will be a violation of international law. They seem to have forgotten that, in 1966, the United States established a 12-mile fishery jurisdiction limit by unilateral action—Public Law 89-658. This legislation was not opposed by the executive branch because it was consistent with international practice at the time. But the 12-mile limit is no longer the definitive rule on fishery jurisdiction in excess of 12 miles. Moreover, a majority of nations at the Law of the Sea Conference have stated their support for a coastal 200-mile economic resource zone which would include jurisdiction over fishery resources. This has all occurred since four treaties on law of the sea, which did not include a limit for fishery jurisdiction, were concluded in 1958.

All told, my view is that it is in our best interests to adopt the emergency interim measures contained in S. 961 designed to regulate and protect the fishery stocks within 200 miles of our coasts.

In conclusion, it should be noted and emphasized that the testimony received by the Foreign Relations Committee indicates that the provisions of S. 961 are totally consistent with the current fishery goals of the United States at the Law of the Sea Conference and are meant to be interim only. Sections of this bill specifically state that if the Law of the Sea negotiations produce an acceptable agreement which is ratified by the Senate, this legislation will be preempted. Consequently, I strongly urge my fellow Senators to vote for the passage of S. 961.

CLAIBORNE PELL.

SUPPLEMENTAL VIEWS

The bill, S. 961, was referred to the Committee on Foreign Relations for an assessment of its potential implications on our foreign relations. While we are familiar with some of the other arguments surrounding S. 961, we shall confine ourselves here to its foreign relations implications.

It is not surprising that similar legislation was unfavorably reported earlier by this committee and by the House Committee on International Relations. If enacted, S. 961 would:

- Violate solemn international treaty obligations to which we are bound;
- Repudiate widely recognized principles of international law that have been acknowledged and invoked by our Government on numerous occasions;
- Provide a major precedent for unilateral action by other nations that could restrict our use of nearly one-third of the world's oceans;
- Endanger success of the Third United Nations' Law of the Sea Conference which will be attended by more than 140 nations when it reconvenes in New York next March to seek a negotiated solution for the very problems this legislation tries to address; and
- Increase the chances of a major confrontation with the Soviet Union, Japan, or other nations endeavoring to protect their access to internationally recognized and protected high seas.

We share the concern of sponsors of S. 961 that a solution must be found for conservation of ocean resources. Indeed, we believe with them that the proposed 200-mile "fishery conservation zone" is an important part of that solution. However, we believe it is absolutely *essential* that such a solution be achieved through international agreement rather than by unilateral action.

One of the ironies of this bill is that its implementation would threaten the success of an international conference which has already agreed in principle on the need for revision of international law to permit establishment by coastal States of a 200-mile "exclusive economic zone" for the purpose of conserving and managing natural resources.

S. 961 VIOLATES GENEVA CONVENTIONS

The First United Nations Law of the Sea Conference met in Geneva in 1958 to attempt to codify existing rules of international oceans law. It produced four conventions, each of which was subsequently ratified by the President of the United States with the advice and consent of the Senate.

One of those treaties was the *Geneva Convention on the High Seas*, which provided in part:

Act. If any provision or terms of any such agreement are not so consistent, the Secretary of State shall initiate negotiations to amend or terminate such agreements by not later than September 30, 1976.

Perhaps such a provision would be meaningful in the case of some of our bilateral fishery agreements, but other agreements are explicitly binding for a minimum period of time (e.g., the *Agreement Concerning Cooperation in Fisheries* signed with South Korea on November 24, 1972, is to remain in force until December 12, 1977); and others require advanced notice of as much as two years before they can be terminated (e.g., *Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea*, signed with Canada on March 2, 1953).

More importantly, the U.S. Secretary of State can hardly insure that the 1958 Geneva *Convention on the High Seas* be either renegotiated or terminated by September 30, 1976. One purpose of the Third U.N. Law of the Sea Conference is to renegotiate parts of those conventions, and agreement on a new treaty is expected within the next two or three years (assuming unilateral U.S. action do not delay or destroy the Conference). However, until international agreement is reached on a new treaty, the existing treaties remain a valid source of international law in their respective areas.

OPINION OF THE INTERNATIONAL COURT OF JUSTICE

It is true that the United States did not ratify the *Optional Protocol of Signature Concerning the Compulsory Settlement of Disputes* adopted by many of the participants at the 1958 Geneva Conference; however, we do have an obligation to comply with international law, and ICJ opinions are generally good evidence of existing international law. Furthermore, we have formally urged many other States to submit their claims of a 200 mile jurisdiction to the International Court of Justice. Even if a particular decision is not binding on the U.S., it is useful and important to take note of ICJ opinions.

Of particular interest, I suggest, is the ICJ decision last year in the fisheries jurisdiction case of *United Kingdom v. Iceland*. The following excerpts provide insight as to the Court's possible view of a unilateral American claim such as that proposed in S. 961:

Two concepts have crystallized as customary law in recent years arising out of the general consensus revealed at that [1958] Conference. The first is the concept of the fishery zone, the area in which a State may claim exclusive fishery jurisdiction independently of its territorial sea: the extension of that fishery zone up to a 12-mile limit from the baselines appears now to be generally accepted. The second is the concept of preferential rights of fishing in adjacent waters in favour of the coastal State in a situation of special dependence on its coastal fisheries . . .

The contemporary practice of States leads to the conclusion that the preferential rights of the coastal State in a special situation are to be implemented by agreement between the States concerned, either bilateral or multilateral, and, in case

of disagreement, through the means for the peaceful settlement of disputes provided for in Article 33 of the Charter of the United Nations. . . .

The concept of preferential rights is not compatible with the exclusion of all fishing activities of other States. A coastal State entitled to preferential rights is not free, unilaterally and according to its own uncontrolled discretion, to determine the extent of those rights. . . .

[T]he Government of Iceland is not in law entitled unilaterally to exclude United Kingdom fishing vessels from sea areas. . . . or unilaterally to impose restrictions on their activities in such areas. . . .

It is implicit in the concept of preferential rights that negotiations are required. . . . The obligation to negotiate thus flows from the very nature of the respective rights of the Parties; to direct them to negotiate is therefore a proper exercise of the judicial function in this case. This also corresponds to the Principles and provisions of the Charter of the United Nations concerning peaceful settlement of disputes: . . .

The task before them will be to conduct their negotiations on the basis that each must in good faith pay reasonable regard to the legal rights of the other in the waters around Iceland outside the 12-mile limit, thus bringing about an equitable apportionment of the fishing resources based on the facts of the particular situation, and having regard to the interests of other States which have established fishing rights in the area.

This reasoning led the International Court of Justice, by a vote of ten to four, to find:

. . . that the Regulations concerning the Fishery Limits off Iceland . . . constituting a unilateral extension of the exclusive fishing rights of Iceland to 50 nautical miles from the baseline specified therein are not opposable to the Government of the United Kingdom.

We are aware of no significant reasons for assuming the ICJ would not take a similarly dim view of a unilateral U.S. claim to a 200 mile fisheries conservation zone.

CONFERENCE CONSENSUS DOES NOT CHANGE LAW

In his testimony before the Foreign Relations Committee on October 31, 1975, the distinguished sponsor of this bill, Senator Magnuson, argued:

There is a consensus within the [Law of the Sea] Conference for a 200-mile economic zone. That consensus, I believe, legitimizes the action we propose in S. 961.

While the Senator is correct in noting the existence of a general consensus—articles 45 to 61 of Part I of the single negotiating text provide for such an economic zone—We believe he is in error in concluding that such a consensus legitimizes unilateral U.S. action as proposed in S. 961.

In the first place, we must realize what a "single negotiating text" is. In his testimony before our committee on May 22 of this year, Deputy Assistant Secretary of State for Oceans and Fisheries Affairs Thomas A. Clingan explained:

The single negotiating text must be viewed as a procedural device providing the basis for further negotiations, and is not a negotiated text or an agreed compromise. . . . Thus, with respect to fisheries as well as other issues, the text must be viewed as not affecting any nation's national position, and amendable in future work sessions.

The decision of most States to accept a 200-mile exclusive economic zone is predicated upon simultaneous agreement on other issues under consideration by the Conference, and should the Conference fail to reach agreement on those other issues some participants might reassess their positions on the economic zone. Until a final agreement is actually reached by the Conference, its proceedings do not alter the presently accepted international law of the sea.

This principle was recognized by the International Court of Justice in the 1974 case of *United Kingdom v. Iceland*, when the report of judgment noted:

The Court is . . . aware of present endeavours, pursued under the auspices of the United Nations, to achieve in a third Conference on the Law of the Sea the further codification and progressive development of this branch of the law, as it is of various proposals and preparatory documents produced in this framework, which must be regarded as manifestations of the views and opinions of individual States and as vehicles of their aspirations, rather than as expressing principles of existing law. The very fact of convening the third Conference on the Law of the Sea evidences a manifest desire on the part of all States to proceed to the codification of that law on a universal basis, including the question of fisheries and conservation of the living resources of the sea.⁶

In a dissenting opinion to the same case, Judge Gros similarly argued:

Articles 1 and 2 of the Convention on the High Seas and Article 24 of the Convention on the Territorial Sea are provisions which are in force, and since the only argument relied on to exclude them is that they are outdated, no reply on this point is needed; the calling of a third codifying Conference in July 1974 amply demonstrates that certain procedures, and agreement, are necessary to replace codifying texts. Until different texts have been regularly adopted, the law of the sea is recorded in the texts in force.⁷

A more recent opinion is provided by former ICJ Judge Philip C. Jessup, who on September 30, 1975, wrote:

It is of course true that at the United Nations Law of the Sea Conferences, there has been much support for agreement on a 200 mile economic zone, but it is generally recognized

⁶ I.C.J., *United Kingdom v. Iceland*, paragraph 53.

⁷ Quoted in *Congressional Record*, October 9, 1975, p. H.9926.

that this is a proposal for new law which can be valid only on the basis of general agreement through treaty.⁸

S. 961 REPUDIATES LONGSTANDING U.S. POSITION

The United States Government has consistently held that unilateral declarations of territorial or fisheries jurisdiction beyond the twelve mile limit are invalid under international law. For example, in April 1970, when Canada sought to establish pollution zones in Arctic waters up to 100 miles off its shore above the 60th parallel—an area within which Canada would assert the right to control all shipping, to prescribe standards of vessel construction, and so forth—the United States immediately protested:

International law provides no basis for these proposed unilateral extensions of jurisdiction on the high seas, and the United States can neither accept nor acquiesce in the assertion of such jurisdiction.

We are concerned that this action by Canada if not opposed by us, would be taken as precedent in other parts of the world for other unilateral infringements on the freedom of the seas. If Canada had the right to claim and exercise exclusive pollution and resources jurisdiction on the high seas, other countries could assert the right to exercise jurisdiction for other purposes, some reasonable and some not, but all equally invalid according to international law. Merchant shipping would be severely restricted, and naval mobility would be seriously jeopardized. The potential for serious international dispute and conflict is obvious.

The United States has long sought international solutions rather than national approaches to problems involving the high seas. . . .

If, however, the Canadian Government is unwilling to await international agreement, we have urged that in the interest of avoiding a continuing dispute and undermining our efforts to achieve international agreement, that we submit our differences regarding pollution and exclusive fisheries jurisdiction beyond 12 miles to the International Court of Justice, the forum where disputes of this nature should rightfully be settled. . . .

With respect to the 12-mile limit on the territorial sea, we have publicly indicated our willingness to accept such a limit, but only as part of an agreed international treaty also providing for freedom of passage through and over international straits.⁹

Similarly, when Canada later that same year announced the establishment of fisheries closing lines extending unilaterally Canadian jurisdiction over areas traditionally regarded as the high seas, the United States responded:

The United States regards this unilateral act as totally without foundation in international law. The United States

⁸ Letter from Philip C. Jessup to Senator Gravel, dated September 30, 1975.

⁹ U.S. Department of State, *Press Release*, No. 121, April 15, 1970.

firmly opposes such unilateral extensions of jurisdiction and believes that outstanding issues concerning the oceans can only be resolved by effective international action.¹⁰

In view of this traditional, and I believe proper, U.S. position on such unilateral claims, it is difficult to conclude that other nations would willingly accept such a unilateral declaration as provided by S. 961. In the event that a confrontation should arise and be brought before the International Court of Justice—in our own words, “the forum where disputes of this nature should rightfully be settled”—we would find ourselves in an almost totally indefensible position, convicted by our own assertions.

A DELAY IN IMPLEMENTATION IS NO REMEDY

It was suggested during Committee consideration of S. 961 that perhaps the bill could be amended to delay implementation for several months in order to give the Law of the Sea conference a chance to reach agreement.

This is clearly not an acceptable solution to the problems posed by this legislation, because the fundamental issue involved is whether or not individual States have a unilateral right to regulate the activities of other States on the high seas. The position of the U.S. until now has been that no such right exists—a position shared by the large majority of other nations and by the International Court of Justice. Should the United States now declare the existence of such a right—even if we announce that we will not invoke that right for a few months, or even several years—other States will be free to cite that U.S. declaration to support unilateral claims of their own. There is no reason to believe that such claims would be limited to fisheries or economic zones, because once we have abrogated the guarantees of freedom of the seas contained in the 1958 Geneva *Convention on the High Seas*, we will hardly be in a position to claim their protection. It should be noted in this regard that the same article (article 2) in the treaty which guarantees the right to freedom of fishing on the high seas also protects freedom of navigation and freedom of overflight.

DANGERS OF UNILATERAL ACTION

Supporters of S. 961 have argued that since it would extend U.S. jurisdiction on the high seas only in the limited area of fishery resources, it has no effect on existing rules dealing with navigation, vessel passage through straits, overflight, scientific research, deep seabed mining, etc.

Unfortunately, this bill does much more than simply extend our jurisdiction over ocean fisheries. This bill, if enacted, would provide a dangerous precedent to other States in support of the principle that unilateral declarations of control over the high seas are a proper means of problem solving. The United States is today concerned with preserving ocean resources, so it is proposed that we unilaterally claim the right to regulate fishing by foreign vessels up to 200 miles

¹⁰ U.S. Department of State, *Press Release*, No. 357, December 18, 1970.

off our coast, in clear violation of articles 1 and 2 of the Geneva Convention on the High Seas.

Canada, on the other hand, is concerned about oil pollution. Should not Canada have an equal right to declare jurisdiction over oil tankers—including the right to prohibit them—up to 200 miles off its coast? For that matter, is there anything sacred about the figure 200 miles? Could not Canada just as easily claim jurisdiction of all of the oceans out to the half-way mark across the Atlantic?

The supporters of S. 961 have argued that action by the U.S. is justified because “the practice of numerous nations reflects support for a 12 mile territorial [sea] with a 200-mile fisheries zone,”¹¹ and they include as an appendix to the Commerce Committee report on this bill a list of 36 nations “which have unilaterally extended their exclusive fishery jurisdiction beyond 12 nautical miles.”¹² One finds on this list 11 States which have declared an “exclusive fisheries jurisdiction” of 200 miles. What the Commerce Committee report does *not* indicate, however, is that 9 of these 11 States—Argentina, Brazil, Ecuador, El Salvador, Nicaragua, Panama, Peru, Sierra Leone, Somalia and Uruguay—have claimed not only a 200 mile *fishery* jurisdiction, but also a 200 mile *territorial sea*.

If the claim of 11 nations to a 200 mile fisheries zone can be the basis of unilateral action by the U.S., cannot the claim of 9 States to a 200 mile territorial sea provide equal justification for similar territorial claims by other States? It would seem wiser for the United States to remain on the side of the 91 other nations of the world that claim 12 miles or less as a fisheries zone. At this point it is perhaps worthwhile to recall the exchange which took place during Foreign Relations Committee hearings on the Law of the Sea between the distinguished chairman of the Subcommittee on Oceans and International Environment, Senator Pell; and the Chairman of the NSC Interagency Task Force on the Law of the Sea, Ambassador John Norton Moore:

Senator PELL. The United States as the leading maritime, naval and air power cannot permit the 200-mile territorial sea to creep into being because wouldn't that reduce the amount of free transit space available to our Navy and planes, by almost a third?

Ambassador MOORE. Very definitely. There is about a third of the world's oceans that would be closed to navigation by a 200-mile territorial sea, and of course, the pragmatic impact is much greater because such a territorial sea would control all approaches to straits, all approaches to major oceans. There would be a total closure of the Mediterranean since it is overlapped in all parts by a 200-mile economic zone or territorial sea.¹³

There are, of course, other strategic and military implications of a widespread claim of a 200 mile territorial sea, to which we are certain

¹¹ Committee on Commerce, U.S. Senate, “Magnuson Fisheries Management and Conservation Act.” *Report* (Washington: U.S. Govt. Printing Office, October 7, 1975), p. 7.

¹² *Ibid.*, p. 66.

¹³ Committee on Foreign Relations, “Law of the Sea,” *Hearings*, p. 22.

the Armed Services Committee will give careful consideration. It should at least be clear that such a development is not in the interest of the United States.

Even without passage of S. 961, of course, there is a danger that more States will make claims to a 200 mile territorial sea. Hopefully, the success of the Third Law of the Sea Conference will strengthen our position in this regard. Until that Conference produces a new international agreement, however, it is very much in our interest to support the existing international law of the sea. So long as we do, we are justified in criticizing and refusing to recognize unilateral claims to control of the high seas by other States. Once we have surrendered the protection of those agreements and made a unilateral claim of high seas jurisdiction ourselves, however, we can hardly protest unilateral claims by others.

In a separate opinion by five judges of the International Court of Justice in the *United Kingdom v. Iceland* case, it was noted:

States submitting proposals for a 200-mile economic zone, for instance, which includes control and regulation of fishery resources in that area, would be in a somewhat inconsistent position if they opposed or protested against claims of other States for a similar extension.¹⁴

Should S. 961 be enacted, the United States might well find itself in the undesirable position of having to accept unilateral declarations to control of the high seas by numerous other States, or of being forced to oppose such claims with the only tool remaining once legal principles have vanished—military force.

In conclusion, we call to the attention of our colleagues the very perceptive opening remarks made by the distinguished chairman of our Subcommittee on Oceans and International Environment as he began hearings in May on the Law of the Sea:

[I]n an interdependent world fraught with the chauvinistic claims of narrow nationalism and economic self-interest, the future of the oceans poses a real test to the spirit of international cooperation. If the nations of the world are unable to compromise their differences, reconcile conflicting national and international interests, and reach an agreement on the law of the sea, then the possibility of resolving other world problems is accordingly diminished. The recent Cod War and *Mayaguez* incident are examples of what the future holds, should this Conference fail.¹⁵

It is because we share the belief that international problems must be solved through multilateral and bilateral international negotiations, rather than by unilateral claims or force, that we strongly urge our colleagues to reject this bill.

ROBERT P. GRIFFIN.
GALE W. MCGEE.

¹⁴ *Congressional Record*, October 9, 1975, p. H.9925.

¹⁵ Committee on Foreign Relations, "Law of the Sea," *Hearings*, p. 1.



FISHERIES MANAGEMENT AND CONSERVATION ACT

DECEMBER 8, 1975.—Ordered to be printed

Mr. McINTYRE, from the Committee on Armed Services,
submitted the following

REPORT

together with

SUPPLEMENTAL AND MINORITY VIEWS

[To accompany S. 961]

The Committee on Armed Services, to which was referred the bill (S. 961) to extend, pending international agreement, the fisheries management responsibility and authority of the United States over the fish in certain areas in order to conserve and protect such fish from depletion, and for other purposes, having considered the same, reports favorably thereon with amendments to the text and recommends that the bill as amended do pass.

COMMITTEE AMENDMENTS

- (1) At the end of the bill add a new title as follows:

TITLE IV—EFFECTIVE DATE

SEC. 401. This Act shall take effect on January 1, 1977.

- (2) On page 44, line 16, strike the words "September 30, 1976" and insert in lieu thereof the words "January 1, 1977".

PURPOSE OF THE BILL

S. 961 would extend U.S. fishery jurisdiction and management authority over a 200 nautical mile zone off U.S. coasts, over fishery resources of the Continental Shelf, and over anadromous species which spawn in U.S. waters wherever they may range on the high seas. The bill seeks to protect the U.S. coastal fishing industry

through regulation or exclusion of foreign fishing within the 200 mile conservation zone.

By its terms the purpose of S. 961 is "to take immediate action to protect and conserve the fishery resources of the Nation by declaring management and conservation authority over such resources . . .". The legislation establishes a national fishery management program to achieve this purpose.

EXPLANATION OF COMMITTEE AMENDMENTS

New effective date

This Committee amendment would delay the effective date of the bill until January 1, 1977. In the absence of this provision, the bill would become effective upon enactment into law.

Although it was not optimistic about prospects for reaching a Law of the Sea agreement on fishery issues within the next year, the Committee wanted to make every effort to minimize the possibility that enactment of S. 961 would interfere with negotiation of any broad fisheries agreement in the near future. Indeed, the Committee is hopeful that delaying enactment of S. 961 until January 1, 1977 will serve as an incentive to the Law of the Sea Conference to expedite a comprehensive agreement on fishery jurisdiction and conservation.

In addition, the delayed enactment of S. 961 could provide a useful period for executive branch preparation regarding the implementation and enforcement of the fisheries management program as well as the renegotiation of any existing treaties or conventions which may be inconsistent with this bill.

Substitution of "January 1, 1977" for "September 30, 1976"

This is a technical amendment to bring the timing of the renegotiation of any existing fishery agreements into conformity with the amended effective date of the bill.

BRIEF DESCRIPTION

Title I of S. 961 establishes a fisheries conservation zone contiguous to the U.S. territorial sea and extending for 200 nautical miles from U.S. coasts. Within this 200 mile zone the United States would exercise exclusive fishery management authority. The United States would also exercise exclusive management authority over fishery resources of the Continental Shelf and anadromous species—such as salmon—throughout their migratory range.

The level of foreign fishing, if any, would be set upon "the basis of the portion of the allowable catch of any fishery or stock of fish which cannot or will not be harvested by vessels of the United States." U.S. fishery jurisdiction would not apply to highly migratory species such as tuna.

The Secretary of State is directed to initiate negotiations to amend or terminate any treaty, convention or international agreement to which the United States is a party whose provisions are inconsistent with S. 961.

S. 961 would be an interim measure in the sense that it would expire at such time as any comprehensive treaty with respect to fishing jurisdiction comes into force or is provisionally applied.

Title II would create a national fishery management program which would, among other things, establish national standards for fishery management. Seven Regional Management Fishery Councils would be established and empowered to recommend management plans and regulations to the Secretary of Commerce. The Secretary of Commerce is authorized to regulate fisheries within the expanded U.S. jurisdiction to "prevent overfishing, rebuild overfished stocks," and "insure conservation".

Title III provides powers to the Secretary of Commerce and the Secretary in charge of the Coast Guard to enforce the provisions of the bill. It also sets forth criminal penalties for actions violating provisions of the bill or regulations issued pursuant to the authority provided in the bill.

For a more detailed description of the bill as well as a section-by-section analysis, see the Senate Commerce Committee Report on S. 961 (Senate Report 94-416, October 7, 1975).

LEGISLATIVE BACKGROUND

S. 1988, the predecessor bill to S. 961, was introduced on June 13, 1973 by Senator Warren G. Magnuson. The bill was ultimately referred to the Armed Services Committee and on November 27, 1974 the Committee, by a vote of 8 to 6, favorably reported the bill to the Senate. The bill passed the Senate but died in the 93d Congress due to inaction by the House of Representatives.

S. 961 was introduced on March 5, 1975 by Senator Magnuson and was co-sponsored by 19 Senators. S. 961 went far beyond S. 1988 by creating a program for fishery management with the accompanying powers, structures, and procedures necessary for effective implementation. Except for fishery conservation and management, S. 961 was similar to S. 1988 in all essential respects.

In its hearings and report on S. 961, the Commerce Committee documented the plight of U.S. coastal fishery stocks and the economic pressures on the U.S. coastal fishing industry. The Committee concluded, consistent with the findings set forth in the bill itself, that numerous critical fishery stocks off U.S. coasts were being severely overfished and threatened with irreversible depletion. Existing international fishing agreements and the recent sessions of the Law of the Sea Conference had not been successful in solving the overfishing problem. As a result, a 200 mile coastal fishery jurisdiction with the authority to exclude foreign fishing vessels and regulate all fishing efforts should be established immediately.

On October 7, 1975 the Senate Commerce Committee by voice vote favorably reported S. 961.

In the meantime, a bill comparable to S. 961 passed the House of Representatives by a vote of 208 to 101 on October 9, 1975.

S. 961 was subsequently referred to the Senate Foreign Relations Committee. By a 7 to 6 vote the committee reported the bill unfavorably on November 18, 1975. The Foreign Relations Committee emphasized that the adoption of S. 961 at this time ". . . would be inconsistent with the spirit of existing U.S. international legal obligations, particularly the 1958 Convention on the High Seas. . . ." The Committee also expressed concern in its report that S. 961 might undermine U.S. negotiating efforts at the Third United Nations Law of the Sea

Conference and "subvert U.S. credibility on all future ocean issues and negotiations."

COMMITTEE ACTION

On November 18, 1975, S. 961, by unanimous consent, was referred to the Armed Services Committee with instructions to report back to the Senate not later than December 2, 1975. Hearings were held before the full Armed Services Committee on November 19th with Admiral James L. Holloway, Chief of Naval Operations and General David C. Jones, Chief of Staff, United States Air Force testifying in opposition to the bill on behalf of the Defense Department. The Honorable John Norton Moore, Chairman of the National Security Council Interagency Task Force on the Law of the Sea and Deputy Special Representative of the President for the Law of the Sea Conference also testified on behalf of the Administration in opposition to S. 961.

The reporting date for the Armed Services Committee was extended by unanimous consent for December 2, 1975 to December 5, 1975 and finally to December 8, 1975.

The Armed Services Committee met in both open and closed sessions on December 3, 1975. After a full discussion, the Committee unanimously adopted an amendment offered by Senator Taft to delay the effective date of the bill until January 1, 1977.

By a margin of 9 to 7 the Committee voted to report favorably S. 961, as amended. Senators Symington, Jackson, Cannon, McIntyre, Byrd of Virginia, Nunn, Leahy, Scott of Virginia, and Taft voted in favor of the bill; Senators Stennis, Culver, Hart of Colorado, Thurmond, Tower, Goldwater and Bartlett voted against the bill.

DISCUSSION

United States faces serious coastal fishing problems

Due to massive overfishing off both the Atlantic and Pacific coasts, U.S. coastal fishery stocks have been steadily depleted. The depletion of some stocks has been so severe that they have become virtually extinct for purposes of commercial fishing. Coastal fishery stocks, which are a renewable source of food, are one of the most valuable ocean resources of the United States. The crisis condition of these stocks is such that if conservation measures are not quickly implemented, some stocks may be depleted beyond the point of self-renewal.

While overfishing and the consequent depletion of U.S. fishery stocks has continued at a growing rate for more than a decade, the catch of the U.S. fishing fleets has remained relatively constant. At the same time the catch of U.S. coastal fishing fleets has dramatically declined as a percentage of the total catch off the U.S. coasts. Huge foreign fishing fleets which use "factory" fishing methods and are often subsidized by foreign governments are in large part responsible for this overfishing problem.

In the face of extensive and continual overfishing, fishery stocks can now be renewed only through aggressive conservation measures regulating the allowable catch quotas for individual species of fish. The committee is convinced that a comprehensive fishery resource conservation program is sorely needed.

The various bilateral and multilateral fishery agreements to which the United States is a party have been unable to prevent serious overfishing along U.S. coasts. These various fishery agreements have not resolved major issues among fishing nations, have not achieved crucial conservation goals and have been without workable enforcement schemes. The ineffectiveness of these agreements is apparent when nearly every specie of fish subject to agreements between the United States and the Soviet Union and Japan can continue to be fished at levels exceeding the maximum sustainable yield for those species. Thus, bilateral and multilateral fishery agreements have not resolved U.S. fishery problems and hold little promise of providing essential relief in the near future.

S. 961 on the other hand would provide a comprehensive program for fishery conservation by establishing a national program for fishery management and conservation. This program includes national conservation standards, explicit regulatory authority, and ample enforcement powers.

The extent and urgency of the U.S. coastal fishery problems have been well established. The committee believes that S. 961 will provide an effective means of overcoming these fishery problems.

S. 961 relates strictly to fishery jurisdiction and does not affect other ocean interests

S. 961 is a bill of limited scope. It deals merely with fishing jurisdiction. It authorizes regulations only as to fishing practices and only in connection with fishery conservation. The bill provides for fishing by foreign nations within the 200-mile fishing zone based on traditional fishing rights and consistent with sound conservation. Moreover, the fishing jurisdiction established in S. 961 is an interim measure and shall expire when a comprehensive treaty regarding fishery jurisdiction comes into force or is provisionally applied.

Several committee members believe that despite the narrow language of the bill, the limited nature of S. 961 has not been generally appreciated. It is vitally important that the international community understand that S. 961 applies only to the regulation of fishing and fishery conservation and does not indicate an intention or desire by the United States otherwise to expand its sovereignty or jurisdiction.

Representatives from the Defense Department and the Law of the Sea Task Force contended that U.S. regulation of fishery resources under S. 961 would somehow justify or invite other nations to take retaliatory action against the United States over a wide range of unrelated ocean interests. Such dire contentions are purely speculative, unsupported by any direct evidence.

Enactment of S. 961, a fisheries management proposal, is clearly distinguishable from jurisdictional extensions which would infringe upon vital military ocean rights. In the case of military ocean rights, the underlying rationale for jurisdictional extensions, the associated risks and consequences, and the effect upon major world powers would be fundamentally different from the case of fishery conservation. The committee was unconvinced that ocean rights affecting crucial U.S. defense interests were so fragile as to be jeopardized by the extension of fishery jurisdiction.

Enactment of S. 961 would not violate international law

As a principle, freedom of fishing on the high seas has long been recognized throughout the world. As late as 1958, freedom of fishing

was set forth as a basic ocean freedom in the Geneva Conventions to which the United States is a signator.

There has never been, however, a clearly defined international rule limiting the jurisdiction of coastal states over fishery resources. Freedom of fishing, particularly in recent years, has not been an unqualified right. Indeed, the Geneva Conventions recognized the special right of a coastal nation to unilaterally adopt conservation measures off its shores, even in areas of the high seas. Certain limitations on fishing activity are generally accepted. As the International Court of Justice stated in FISHERIES JURISDICTION CASE, (1974) ICJ 26:

State practice on the subject of fisheries reveals an increasing and widespread acceptance of the concept of preferential rights for coastal States, particularly in favour of countries or territories in a situation of special dependence on coastal fisheries.

The Court went on to emphasize that:

The preferential rights of the coastal State come into play only at the moment when an intensification in the exploitation of fishery resources makes it imperative to introduce some system of catch-limitation and sharing of those resources, to preserve the fish stocks in the interests of their rational and economic exploitation. *Ibid.* 27.

The necessity for placing limits on what has historically been an unrestrained right to fishing has developed during the last 25 years. Dramatic changes have recently occurred in the levels of fishery stocks, the technology of fishing and the extent of distant fishing efforts. These changes have combined to produce wholly new conditions for world fishing and a world consensus, evidenced that the Law of the Sea Conference, for the establishment of extended coastal state fishery jurisdiction. Nearly 40 nations have already extended their fishery jurisdiction beyond 12 miles.

International law is inherently dynamic as well as ambiguous. The extraordinary changes and pressures affecting coastal fisheries make extended coastal fishery jurisdiction urgently needed. S. 961, by providing for a prompt renegotiation of existing U.S. fishing agreements and recognizing traditional fishing rights of foreign nations, is an orderly means to implement what is already a world consensus on fishing. Rather than contradicting international law, S. 961 is a reasonable reflection of developing international law.

S. 961 will not affect present negotiations at the Law of the Sea Conference

The most recent session of the United Nations Law of the Sea Conference resulted in little measurable progress. There are over 100 nations involved in the Conference negotiations and a very broad spectrum of ocean issues which must be resolved. While a single negotiating text was developed at the Geneva session, not a single vote was taken on any of the positions included in the text.

Senator Thomas McIntyre, the committee's representative at the Law of the Sea Conference, reported to the committee that in his opinion ". . . a treaty would not be completed this year, next year or even in the near future." Senator McIntyre also reported that the best

estimates of Ambassador John Stevenson, the former head of the U.S. negotiating team, put the conclusion of the treaty ". . . some 3 years hence with several years passing before all nations ratify the treaty and it becomes effective." The prospects for a timely Law of the Sea treaty which would begin to remedy the serious problem of U.S. coastal fisheries are bleak.

S. 961 is consistent with the U.S. negotiating position on an economic zone for fisheries at the Law of the Sea Conference. General agreement does exist among nations at the conference to establish 200-mile fishery zones off coastal States. Given that S. 961 closely parallels the language contained in the Law of the Sea negotiating text with respect to fisheries, it clearly reflects on international consensus on this issue. In addition, the establishment by S. 961 of a 200-mile fishery zone is only interim legislation which will terminate with acceptance of international agreement on fishery jurisdiction. S. 961 therefore supports rather than conflicts with the Law of the Sea negotiations.

To give the negotiations as much leeway as possible in the upcoming session of the conference, the committee amended S. 961 to delay implementation of the act until January 1, 1977. This delay hopefully will provide an added impetus to the U.S. negotiating team at the next session of the Law of the Sea Conference.

CONCLUSION

S. 961 is needed to protect vital U.S. fisheries interests. The committee did not believe that considerations of national defense and security detracted from the urgent desirability of S. 961. Thus, the committee reports S. 961 favorably and recommends that it do pass.

SUPPLEMENTAL VIEWS

While I find myself very much in agreement with the Committee views on the necessity of passing this legislation without delay in order to preserve fish stocks which might well otherwise be dangerously depleted or destroyed, I feel some further comments should be made on the international situation surrounding this decision.

While the general prognosis on the results of the Law of the Sea Conference, from almost all sources other than our own official optimistic viewpoint, indicate that it is unlikely that any signed agreement relating to fisheries or other topics can result in 1976 or even 1977, I do not feel we should give up a last hope of that occurring. For that reason, I did ask that there be added to the Senate Bill, an effective date of January 1, 1977, to which all Members of the Committee have now agreed. And with this decision, it is my hope that the chances of some more definitive action by the Law of the Sea Conference next spring may be improved. Indeed, it seems that the passage of the legislation with such a time deadline should make more likely the meaningful progress on the subject at that Conference. Meanwhile, every effort should be continued by our government to work out bilateral agreements as protective as possible of the fishery resources involved.

I am somewhat appalled by one aspect of the current and past discussions relating to this legislation and to the Law of the Sea Conference. At a recent informal meeting of representatives of many of the European nations and of Japan which I attended, the Law of the Sea Conference was discussed. I learned with alarm that there was no recognition by the participants at either the delegate or staff level, of the fact that the House action on this legislation and the proposed Senate action extended *only* to appropriate regulation of fishing with generous sharing of quotas and clearly indicates no intention or desire on the part of the United States to establish a 200 mile territorial zone. I can only judge from this ignorance that our own international representatives dealing with this subject have not made this position clear. It seems to me vital in our international interests and in the interest of appropriate progress for the Law of the Sea Conference that this situation be remedied as quickly as possible. It would seem that advocates in our government dealing with the subject have been so obsessed with attempting to convince Congress of the supposed dangers of our action as being interpreted as related to a territorial sea position that they have not bothered to present the true position in the international community. With the passage of this legislation, I hope they will do so.

ROBERT TAFT, JR.

(9)

MINORITY VIEWS

S. 961 is intended to prevent overfishing and the irreversible depletion of numerous fishing stocks along U.S. coasts and to protect the increasingly depressed U.S. coastal fishing industry. Coastal fishery stocks and the coastal fishing industry represent important U.S. ocean interests. Enactment of S. 961 can surely be expected to promote these particular U.S. ocean interests.

But enactment of S. 961 can also be expected to affect adversely other vital U.S. ocean interests. Enactment of S. 961 would be inconsistent with international law and constitute a drastic reversal of the long-time U.S. policy of trying to settle contentious international issues through negotiation and agreement rather than unilateral action and coercion. Enforcement of S. 961 against non-consenting fishing nations could result in dangerous armed confrontations. S. 961 would undermine the prospects for successful negotiation of a comprehensive Law of the Sea Treaty which is by far the best way to secure all the various U.S. ocean interests. Perhaps most importantly, S. 961 would jeopardize the existing world order for freedom of ocean navigation which is so crucial to both U.S. strategic and conventional defense efforts.

Because of these adverse effects, we feel that enactment of S. 961 at this time would not, on balance, be in the best overall interests of the United States.

S. 961 is inconsistent with international law

The 1958 Geneva Conventions, which sought to codify international law with respect to oceans, established freedom of fishing as one of four basic ocean freedoms. As a signator the United States officially endorsed the declaration, contained in Article II of the Convention on the High Seas, that these four freedoms "are recognized by the general principles of international law" and "shall be exercised by all States with reasonable regard to the interests of other States". The unilateral and exclusive extension of fishery jurisdiction by the United States contained in S. 961 directly violates the freedom of fishing.

In practice, the United States, like the majority of nations, has steadfastly refused to recognize any unilateral claims for expanded ocean sovereignty, including fishing jurisdiction of 200 miles. The United States has regularly endorsed the policy of settling competing ocean claims through international agreement or adjudication rather than resorting to unilateral assertions.

The world community has likewise embraced a policy of international agreement and adjudication for resolving conflicting ocean claims. In 1974 Great Britain instituted proceedings in the International Court of Justice against a unilateral extension of fishery jurisdiction by Iceland. The Court held that Iceland's declaration of a 50-nautical mile fishery zone was not enforceable under international law.

To be sure, fishing conditions have changed since 1958. Some nations—fewer than 15—have asserted 200-mile fishery jurisdiction. Indeed, there presently is a consensus among nations that a 200-mile fishery jurisdiction for coastal states would be desirable. But these considerations, in the face of international treaties, practice and case law to the contrary, cannot change international law. Similarly, prevailing international law, however fragile, cannot be overturned by the unilateral action of a single nation.

In addition to being inconsistent with international law, S. 961 would conflict with many bilateral and multilateral fishing treaties to which the United States is presently a party. If not immediately abrogated or renegotiated, existing treaty provisions inconsistent with S. 961, provisions such as those setting allowable fishing quotas, would be nullified under U.S. law. This is particularly unfortunate when bilateral and multilateral agreements negotiated during the last year have resulted in substantially lower fishing quotas along U.S. coasts.

By acting contrary to international law and treaty obligations with regard to a fundamental ocean freedom, the United States will be resorting to a dangerous and uncertain approach to resolving ocean issues.

Enforcement of S. 961 could result in armed confrontation

The 200-mile fishing conservation zone established by S. 961 would cover roughly two million square miles of ocean. U.S. jurisdiction over anadromous species wherever they may roam would further increase U.S. responsibility. Effective regulation of fishing against non-consenting nations throughout such a vast area would be difficult and, as provided for in S. 961, could require the resources of the Defense Department.

Because a U.S. extension of fishery jurisdiction would violate their rights under international law and could result in severe economic harm, many major fishing nations might not consent to U.S. jurisdiction. Iceland's recent declaration of a 200-nautical mile fishery zone provoked open defiance by fishermen of Great Britain who have received the protection of the Royal Navy when fishing within 200 miles of Iceland. As evidenced by the U.S. experience in South America, the fining and imprisonment of foreign fishermen is itself a serious provocation. Hence the risk of hostilities between U.S. Coast Guard or U.S. military forces and the fishing boats or military vessels of other nations could be substantial.

S. 961 could undermine the Law of the Sea Conference

Progress at the Law of the Sea Conference has been understandably slow given the breadth and complexity of the issues to be resolved. Nevertheless during the last session in Geneva, the Conference moved toward a "single negotiating text" which included a fisheries proposal compatible with S. 961.

It is the goal of the U.S. negotiators and the Conference as a whole to achieve a comprehensive agreement by bargaining simultaneously on all major ocean rights. If the United States, an acknowledged leader and the greatest ocean user, abandons the Law of the Sea Conference as the appropriate means to secure a particular ocean interest, the fragile momentum of the Conference towards a "package deal" on ocean rights could be shattered.

S. 961 jeopardizes U.S. defense interests

Several ocean interests are crucial to U.S. national defense. It is vitally important that U.S. forces be able to navigate freely under, on and over the world's oceans. An indispensable part of U.S. strategic forces are constantly seaborne in the U.S. submarine fleet. U.S. conventional forces which have been forwardly stationed throughout the world must have the capability for deployment, resupply, and reinforcement via the oceans of the world.

In particular, U.S. ocean interests crucial to defense include: (1) a narrow definition of territorial seas from which U.S. forces could be excluded, i.e., a 12-mile limit, (2) maintenance of the principle of innocent passage of straits including the right of submerged transit, (3) unimpeded overflight rights on the high seas, (4) preservation of the right for certain underwater surveillance operations. Thus military mobility and flexibility is directly predicated on freedom of the seas.

If the United States acts unilaterally to protect a parochial ocean interest by imposing its will on the nations of the world, history and logic indicate that these same nations will retaliate by acting to protect their parochial ocean interests. The parochial ocean interests of other nations are not limited to fishing but include the full spectrum of ocean interests from military transit to seabed mining. Witness the proliferation of claims for larger territorial and hence navigational jurisdiction following the expansion of U.S. fishing jurisdiction in 1945 and 1960. Consistent with this historical pattern of escalating retaliation, Mexico, only six days after passage in the U.S. House of Representatives of legislation establishing a 200-mile fishing zone, declared a 200-mile economic zone. This economic zone included jurisdiction over ocean resources considerably beyond fisheries as well as jurisdiction over ship construction and operation.

It is this direct and inherent linkage among major ocean rights that greatly raises the risks to U.S. national security of enacting S. 961.

Progress is being made to relieve U.S. fishery problems

Since Senate consideration of S. 1988 last year, recently negotiated bilateral and multilateral fishery agreements have made significant progress in fishery conservation along both the Atlantic and Pacific coasts. For example, in September 1975, a 23 percent reduction in overall catch quotas was negotiated within the International Commission for the Northwest Atlantic Fisheries in the coastal area from Maine to North Carolina. In the Pacific, the United States negotiated improved agreements with the Soviet Union as well as with Japan. These agreements resulted in sizable reductions in fishing quotas for certain overfished species such as rockfish, cod and pollock. All of these agreements are regularly reviewed and renegotiated.

Such continuing negotiations offer a direct and constructive means for conserving coastal fisheries, particularly since the bulk of foreign overfishing can be traced largely to a few major fishing nations. Thus, the United States is not waiting for a Law of the Sea treaty to remedy its fishery problems.

Delaying the effective date of S. 961 will not cure its adverse impact on U.S. ocean interests

The Committee amendment would make the effective date of the bill January 1, 1977. Given the slowness of the legislative process and

the July 1, 1976, effective date in the companion House bill, the Committee amendment could delay establishment of the 200-mile fishing jurisdiction by only a matter of months. Such a short delay would be hardly significant to the Law of the Sea negotiations. More importantly, a resort to unilateral action would have the same ramifications for international law and other U.S. ocean interests regardless of the precise date of enactment.

Conclusions

The U.S. coastal fishing problems deserve vigorous attention. But unilateral action which is contrary to international law and negotiating efforts and which risks national security and other U.S. ocean interests is not the most effective way to proceed for the nation as a whole. We believe that such a last resort is unnecessary and unwise at this time.

JOHN C. STENNIS.
STROM THURMOND.
JOHN G. TOWER.
DEWEY F. BARTLETT.



FISHERY CONSERVATION AND
MANAGEMENT ACT OF 1976

REPORT

OF THE

COMMITTEE OF CONFERENCE

ON

H.R. 200

TO PROVIDE FOR THE CONSERVATION AND MANAGEMENT
OF THE FISHERIES, AND FOR OTHER PURPOSES



MARCH 24, 1976.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1976

FISHERY CONSERVATION AND MANAGEMENT
ACT OF 1976

MARCH 24, 1976.—Ordered to be printed

Mr. MAGNUSON, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 200]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 200), to provide for the conservation and management of the fisheries, and for other purposes, having met after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:

That this Act, with the following table of contents, may be cited as the "Fishery Conservation and Management Act of 1976".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.

Sec. 3. Definitions.

TITLE I—FISHERY MANAGEMENT AUTHORITY
OF THE UNITED STATES

Sec. 101. Fishery conservation zone.

Sec. 102. Exclusive fishery management authority.

Sec. 103. Highly migratory species.

Sec. 104. Effective date.

TITLE II—FOREIGN FISHING AND INTERNATIONAL
FISHERY AGREEMENTS

Sec. 201. Foreign fishing.

Sec. 202. International fishery agreements.

Sec. 203. Congressional oversight of governing international fishery agreements.

Sec. 204. Permits for foreign fishing.

Sec. 205. Import prohibitions.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

- Sec. 301. National standards for fishery conservation and management.
 Sec. 302. Regional fishery management councils.
 Sec. 303. Contents of fishery management plans.
 Sec. 304. Action by the Secretary.
 Sec. 305. Implementation of fishery management plans.
 Sec. 306. State jurisdiction.
 Sec. 307. Prohibited acts.
 Sec. 308. Civil penalties.
 Sec. 309. Criminal offenses.
 Sec. 310. Civil forfeitures.
 Sec. 311. Enforcement.
 Sec. 312. Effective date of certain provisions.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Effect of law of the sea treaty.
 Sec. 402. Repeals.
 Sec. 403. Fishermen's Protective Act amendments.
 Sec. 404. Marine Mammal Protection Act amendment.
 Sec. 405. Atlantic Tunas Convention Act amendment.
 Sec. 406. Authorization of appropriations.

SEC. 2. FINDINGS, PURPOSES, AND POLICY.

(a) *FINDINGS.*—The Congress finds and declares the following:

(1) *The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.*

(2) *As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.*

(3) *Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.*

(4) *International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.*

(5) *Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible ef-*

fects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) *A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.*

(7) *A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.*

(b) *PURPOSES.*—It is therefore declared to be the purposes of the Congress in this Act—

(1) *to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;*

(2) *to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;*

(3) *to promote domestic commercial and recreational fishing under sound conservation and management principles;*

(4) *to provide for the preparation and implementation, in accordance with national standards, of fishery management plans which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;*

(5) *to establish Regional Fishery Management Councils to prepare monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and*

(6) *to encourage the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska.*

(c) *POLICY.*—It is further declared to be the policy of the Congress in this Act—

(1) *to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;*

(2) *to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the*

conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Seas, which provides for effective conservation and management of fishery resources.

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) The term "anadromous species" means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term "conservation and management" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term "Continental Shelf" means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLEENTERATA

Bamboo Coral—*Acanella* spp.;
Black Coral—*Antipathes* spp.;
Gold Coral—*Callogorgia* spp.;
Precious Red Coral—*Corallium* spp.;
Bamboo Coral—*Keratoisis* spp.; and
Gold Coral—*Parazoanthus* spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*;
Tanner Crab—*Chionoecetes opilio*;
Tanner Crab—*Chionoecetes angulatus*;
Tanner Crab—*Chionoecetes bairdi*;
King Crab—*Paralithodes camtschatica*;
King Crab—*Paralithodes platypus*;
King Crab—*Paralithodes brevipes*;
Lobster—*Homarus americanus*;
Dungeness Crab—*Cancer magister*;
California King Crab—*Paralithodes californiensis*;
California King Crab—*Paralithodes rathbuni*;
Golden King Crab—*Lithodes aequispinus*;
Northern Stone Crab—*Lithodes maja*;
Stone Crab—*Menippe mercenaria*; and
Deep-sea Red Crab—*Geryon quinquedens*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*;
Pink Abalone—*Haliotis corrugata*;
Japanese Abalone—*Haliotis kamtschatkana*;
Queen Conch—*Strombus gigas*;
Surf Clam—*Spisula solidissima*; and
Ocean Quahog—*Artica islandica*.

SPONGES

Glove Sponge—*Hippiospongia canaliculata*;
Sheepswool Sponge—*Hippiospongia lachne*;
Grass Sponge—*Spongia graminea*; and
Yellow Sponge—*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

- (A) the catching, taking, or harvesting of fish;
- (B) the attempted catching, taking, or harvesting of fish;
- (C) any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish; or
- (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "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—

- (A) fishing; or
- (B) 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, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

- (A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and
- (B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State,

local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(23) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(24) The term "United States", when used in a geographical context, means all the States thereof.

(25) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

SEC. 101. FISHERY CONSERVATION ZONE.

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

SEC. 102. EXCLUSIVE FISHERY MANAGEMENT AUTHORITY.

The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

- (1) All fish within the fishery conservation zone.
- (2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

SEC. 103. HIGHLY MIGRATORY SPECIES.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104. EFFECTIVE DATE.

This title shall take effect March 1, 1977.

**TITLE II—FOREIGN FISHING AND INTERNATIONAL
FISHERY AGREEMENTS**

SEC. 201. FOREIGN FISHING.

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

- (1) is authorized under subsection (b) or (c);
- (2) is not prohibited by subsection (f); and
- (3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

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

- (1) was in effect on the date of enactment of this Act; and
- (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

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

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

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

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

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

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

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

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

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

(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

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

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

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

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

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

(4) The foreign nation will—

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

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

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

(d) *TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.*—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this Act.

(e) *ALLOCATION OF ALLOWABLE LEVEL.*—The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the exclusive fishery management authority of the United States. In making any such determination, the Secretary of State and the Secretary shall consider—

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

(2) whether such nations have cooperated with the United States in, and made substantial contributions to, fishery research and the identification of fishery resources;

(3) whether such nations have cooperated with the United States in enforcement and with respect to the conservation and management of fishery resources; and

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

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

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

(1) shall contain a preliminary description of the fishery and a preliminary determination as to the optimum yield from such fishery and the total allowable level of foreign fishing with respect to such fishery;

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

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

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

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

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

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

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

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS.

(a) **NEGOTIATIONS.**—The Secretary of State—

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

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

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

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

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

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

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

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

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

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

(2) may be entered into after May 31, 1976; by the United States unless it is in accordance with the provisions of section 201(c).

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

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

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

- (2) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nation is a party to any such agreement; or
- (3) imposes on fishing vessels of the United States any conditions or restrictions which are unrelated to fishery conservation and management.

SEC. 203. CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) *IN GENERAL.*—No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

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

(c) *COMPUTATION OF 60-DAY PERIOD.*—For purposes of subsection (a)—

- (1) continuity of session is broken only by an adjournment of Congress sine die; and
- (2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) *CONGRESSIONAL PROCEDURES.*—

(1) *RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.*—The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) *DEFINITION.*—For purposes of this subsection, the term “fishery agreement resolution” refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) *PLACEMENT ON CALENDAR.*—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) *FLOOR CONSIDERATION IN THE HOUSE.*—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) *FLOOR CONSIDERATION IN THE SENATE.*—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal

and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) *IN GENERAL.*—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) *APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.*—

(1) *ELIGIBILITY.*—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).

(2) *FORMS.*—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) *CONTENTS.*—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

(E) the ocean area in which, and the season or period during which, such fishing will be conducted; and shall include any other pertinent information and material which the Secretary may require.

(4) *TRANSMITTAL FOR ACTION.*—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy of such material to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

(5) *ACTION BY COUNCIL.*—After receipt of an application transmitted under paragraph (4) (B), each appropriate Council shall prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) *APPROVAL.*—After receipt of any application transmitted under paragraph (4) (A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5) may approve the application will meet the requirements of this Act.

(7) *ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.*—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) *NOTICE OF APPROVAL.*—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating;

(C) any Council which has authority over any fishery specified in such application; and

(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

(9) **DISAPPROVAL OF APPLICATIONS.**—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefor. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) **FEES.**—Reasonable fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees, which shall apply nondiscriminatorily to each foreign nation. In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries, research, administration, and enforcement.

(11) **ISSUANCE OF PERMITS.**—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12) **SANCTIONS.**—If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 307 the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue the Secretary shall—

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate; or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for non-payment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

(c) **REGISTRATION PERMITS.**—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection

(a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms for such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205. IMPORT PROHIBITIONS.

(a) **DETERMINATIONS BY SECRETARY OF STATE.**—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201(c) and (d) and 204(b)(7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

(A) in violation of an applicable international fishery agreement;

(B) without authorization under an agreement between the United States and such nation; or

(C) as a consequence of a claim of jurisdiction which is not recognized by the United States;

he shall certify such determination to the Secretary of the Treasury.

(b) **PROHIBITIONS.**—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—

(1) of all fish and fish products from the fishery involved, if any; and

(2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.

(c) **REMOVAL OF PROHIBITION.**—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.

(d) **DEFINITION.**—As used in this section—

(1) The term “fish” includes any highly migratory species.

(2) The term “fish products” means any article which is produced from or composed of (in whole or in part) any fish.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.

(a) **IN GENERAL.**—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) **GUIDELINES.**—The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) **ESTABLISHMENT.**—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(1) **NEW ENGLAND COUNCIL.**—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(2) **MID-ATLANTIC COUNCIL.**—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary pursuant to subsection (b)(1) (at least one of whom shall be appointed from each such State).

(3) **SOUTH ATLANTIC COUNCIL.**—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(4) **CARIBBEAN COUNCIL.**—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(5) **GULF COUNCIL.**—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(6) **PACIFIC COUNCIL.**—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific

Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(7) **NORTH PACIFIC COUNCIL.**—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b) (1) (C) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington.)

(8) **WESTERN PACIFIC COUNCIL.**—The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) **VOTING MEMBERS.**—(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after the date of the enactment of this Act. As used in this subparagraph, (i) the term "list of qualified individuals" shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and (ii) the term "qualified individual" means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

(2) Each voting member appointed to a Council pursuant to paragraph (1) (C) shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up

to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.

(3) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(c) **NONVOTING MEMBERS.**—(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) **COMPENSATION AND EXPENSES.**—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c) (1) (C), and the nonvoting member appointed pursuant to subsection (c) (2) shall be reimbursed for actual expenses incurred in the performance of such duties.

(e) **TRANSACTION OF BUSINESS.**—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement.

(f) **STAFF AND ADMINISTRATION.**—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND PANELS.—

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each plan as are necessary;

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B), and any fishery management plan or amendment transmitted to it under section 304(c)(2);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act;

(4) submit to the Secretary—

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year,

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) REQUIRED PROVISIONS.—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3), and

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, and number of hauls.

(b) **DISCRETIONARY PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery, and

(F) any other relevant considerations; and

(7) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) **PROPOSED REGULATIONS.**—Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to section 304 and 305.

(d) **CONFIDENTIALITY OF STATISTICS.**—Any statistics submitted to the Secretary by any person in compliance with any requirement under

subsection (a) (5) shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

SEC. 304. ACTION BY THE SECRETARY.

(a) **ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.**—Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall—

(1) review such plan or amendment pursuant to subsection (b); and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification.

(b) **REVIEW BY THE SECRETARY.**—The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with—

(1) the Secretary of State with respect to foreign fishing; and

(2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(c) **PREPARATION BY THE SECRETARY.**—(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management; or

(B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a) (2).

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall

promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this Act, and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 305.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 303(b)(6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) **ESTABLISHMENT OF FEES.**—The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b)(1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits.

(e) **FISHERIES RESEARCH.**—The Secretary shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(f) **MISCELLANEOUS DUTIES.**—(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

- (A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or
- (B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

(a) **IN GENERAL.**—As soon as practicable after the Secretary—

- (1) approves, pursuant to section 304(a) and (b), any fishery management plan or amendment; or
- (2) prepares, pursuant to section 304(c), any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.

(b) **HEARING.**—The Secretary may schedule a hearing, in accordance with section 553 of title 5, United States Code, on any fishery manage-

ment plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome—

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

(c) **IMPLEMENTATION.**—The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan—

(1) after consideration of all relevant matters—

(A) presented to him during the 45-day period referred to in subsection (a), and

(B) produced in any hearing held under subsection (b); and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this Act, and any other applicable law.

To the extent practicable, such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.

(d) **JUDICIAL REVIEW.**—Regulations promulgated by the Secretary under this Act shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706 (2) (A), (B), (C), or (D) of such title.

(e) **EMERGENCY ACTIONS.**—If the Secretary finds that an emergency involving any fishery resources exists, he may—

(1) promulgate emergency regulations, without regard to subsections (a) and (c), to implement any fishery management plan, if such emergency so requires; or

(2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency.

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repromulgated for one additional period of not more than 45 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

(e) **ANNUAL REPORT.**—The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources

that were undertaken under this Act during the preceding calendar year.

(f) **RESPONSIBILITY OF THE SECRETARY.**—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

SEC. 306. STATE JURISDICTION.

(a) **IN GENERAL.**—Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

(b) **EXCEPTION.**—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominantly within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201 (c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for pur-

poses of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

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

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C); or

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

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—

(A) within the boundaries of any State; or

(B) within the fishing conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c).

SEC. 308. CIVIL PENALTIES.

(a) **ASSESSMENT OF PENALTY.**—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) **REVIEW OF CIVIL PENALTY.**—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706 (2) of title 5, United States Code.

(c) **ACTION UPON FAILURE TO PAY ASSESSMENT.**—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) **COMPROMISE OR OTHER ACTION BY SECRETARY.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

SEC. 309. CRIMINAL OFFENSES.

(a) **OFFENSES.**—A person is guilty of an offense if he commits any act prohibited by—

- (1) section 307(1) (D), (E), (F), or (H); or
- (2) section 307(2).

(b) **PUNISHMENT.**—Any offense described in subsection (a)(1) is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a)(2) is punishable by a fine of not more than \$100,000, or imprisonment for not more than 1 year, or both.

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

SEC. 310. CIVIL FORFEITURES.

(a) **IN GENERAL.**—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) **JURISDICTION OF COURTS.**—Any district court of the United States which has jurisdiction under section 311(d) shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

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

- (1) the disposition of forfeited property,

- (2) the proceeds from the sale of forfeited property,
- (3) the remission or mitigation of forfeitures, and
- (4) the compromise of claims,

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

(d) **PROCEDURE.**—(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311(d) shall—

(A) stay the execution of such process; or

(B) discharge any fish seized pursuant to such process;

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

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

(e) **REBUTTABLE PRESUMPTION.**—For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

SEC. 311. ENFORCEMENT.

(a) **RESPONSIBILITY.**—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act.

(b) **POWERS OF AUTHORIZED OFFICERS.**—Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

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

(A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;

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

(C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(D) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

(E) seize any other evidence related to any violation of any provision of this Act;

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

(3) exercise any other lawful authority.

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

(d) **JURISDICTION OF COURTS.**—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security; and

(4) take such other actions as are in the interest of justice.

(e) **DEFINITION.**—For purposes of this section—

(1) The term “provisions of this Act” includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201 (b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term “violation of any provision of this Act” includes

(A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS.

Sections 307, 308, 309, 310 and 311 shall take effect March 1, 1977.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON LAW OF THE SEA TREATY.

If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

SEC. 402. REPEALS.

(a) The Act of October 14, 1966 (16 U.S.C. 1091–1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081–1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) **AMENDMENTS.**—The Act of August 27, 1954 (22 U.S.C. 1972), is amended—

(1) by amending section 2 thereof to read as follows:

“Sec. 2. If—

“(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

“(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

“(A) are unrelated to fishery conservation and management,

“(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

“(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

“(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

“(i) for the protection of such vessel and for the health and welfare of its crew;

“(ii) to secure the release of such vessel and its crew; and

“(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.”; and

(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: “For purposes of this section, the term ‘other direct charge’ means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) (1) shall take effect March 1, 1977. The amendment made by subsection (a) (2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) **AMENDMENT.**—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking out “the fisheries zone established pursuant to the Act of October 14, 1966.” and inserting in lieu thereof “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) **AMENDMENT.**—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out “the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091–1094).” and inserting in lieu thereof “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

(1) \$500,000 for the fiscal year ending June 30, 1976.

(2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.

(3) \$25,000,000 for the fiscal year ending September 30, 1977.

(4) \$30,000,000 for the fiscal year ending September 30, 1978.

And the Senate agreed to the same.

That the Senate recede from its amendment to the title of the bill.

WARREN G. MAGNUSON,
JOHN O. PASTORE,
ERNEST F. HOLLINGS,
EDMUND S. MUSKIE,
THOMAS J. MCINTYRE,
EDWARD M. KENNEDY,
CLAIBORNE PELL,
JAMES L. BUCKLEY,
TED STEVENS,
J. GLENN BEALL,
LOWELL P. WEICKER, JR.,
BOB PACKWOOD,

Managers on the Part of the Senate.

LEONOR K. SULLIVAN,
JOHN D. DINGELL,
THOMAS N. DOWNING,
ROBERT L. LEGGETT,
GERRY E. STUDDS,
PHILIP E. RUPPE,
EDWIN B. FORSYTHE,

Managers on the Part of the House.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 200), to provide for the conservation and management of the fisheries, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck out all of the House bill after the enacting clause and inserted a substitute text and provided a new title for the House bill, and the House disagreed to the Senate amendments.

The committee of conference recommends that the House recede from its disagreement to the amendment of the Senate to the text of the House bill, with an amendment which is a substitute for both the text of the House bill and the Senate amendment to the text of the House bill. The committee of conference also recommends that the Senate recede from its amendment to the title of the House bill.

The provisions of the amendment recommended by the committee of conference are set forth below in a manner sufficiently detailed and explicit to inform the House and the Senate as to the effect which the amendment contained in the accompanying conference report will have upon the measure to which it relates.

SUMMARY AND DESCRIPTION

The purpose of the conference substitute is to provide for the protection, conservation, and enhancement of the fishery resources of the United States. To achieve this objective, the conference substitute follows both the House bill and the Senate amendment in—

(1) Establishing a zone contiguous to the territorial sea of the United States and extending 200 nautical miles from the baseline from which that sea is measured, to be known as the fishery conservation zone; and by providing that the United States shall exercise exclusive fishery management authority within this zone over all fish (except highly migratory species), and beyond this zone, over all anadromous species of fish that spawn in U.S. rivers and streams and migrate to ocean waters, to the extent of their range, and over all fishery resources of the Continental Shelf which appertains to the United States; and

(2) Providing for the development, implementation, administration, and enforcement of fishery management plans and regulations, in accordance with national standards for fishery conservation and management, with respect to any fish over which the United States exercises exclusive fishery management authority; and by providing for foreign fishing consonant with such conservation and management measures pursuant to U.S.-issued per-

mits, and in accordance with new governing international fishery agreements with the United States acknowledging this exclusive U.S. fishery management authority.

The legislation is not intended to interfere with or to preempt pending negotiations at the third session of the Third United Nations Law of the Sea Conference. First, the provisions establishing the fishery conservation zone, exclusive U.S. authority (title I), and enforcement (sections 307-311) shall not take effect until March 1, 1977. Second, it is a declared policy of Congress in this legislation "to support and encourage continued active United States efforts to obtain an internationally acceptable treaty which provides for effective fishery conservation and management" (sec. 2(c)(5)). Third, the conference substitute follows the House bill in granting the Secretary of Commerce authority to conform regulations issued pursuant to this Act to the fishery management jurisdiction provisions of an international fishery agreement that may result from any United Nations Conference on the Law of the Sea once that agreement has been ratified by the United States and in anticipation of that agreement coming into force and effect or otherwise being applicable to the United States (sec. 401). The provisions are not only provisional, pending international agreement, but they are also substantially consistent with the developing consensus within the Third United Nations Law of the Sea Conference.

The conference substitute maintains the existing ocean jurisdiction of the United States without change for all purposes other than the conservation and management of fishery resources (sec. 2(c)(1)), and it follows both the House bill and the Senate amendment in specifically excluding highly migratory species of fish from exclusive coastal nation management authority (sec. 103). Highly migratory species are to be managed pursuant to international fishery agreements established for such purpose.

Title II of the conference substitute authorizes foreign fishing for species and resources under the exclusive fishery management authority of the United States pursuant to (1) an international fishery agreement which is in effect as of the date of enactment of this legislation pending renegotiation (in the case of a treaty) or expiration (in any other case), and (2) pursuant to a "governing international fishery agreement". It is the sense of Congress that a governing international fishery agreement between the U.S. and a foreign fishing nation shall contain specified provisions essential to the conservation and management of fishery resources (sec. 201(c)). The conference substitute follows the House bill in providing that such an agreement shall not become effective until it has been submitted to and reviewed by the Congress (sec. 203). The total allowable level of foreign fishing with respect to any fishery under exclusive United States authority shall be that portion of the optimum yield from such fishery which will not be harvested by vessels of the United States. No foreign fishing vessel shall engage in fishing within the fishery conservation zone of the United States or for anadromous species or Continental Shelf fishery resources of the United States beyond this zone (except as to highly migratory species), after February 28, 1977, unless the vessel has on board a valid permit issued by

the Secretary of Commerce, through the Secretary of State, pursuant to section 204 of this legislation. United States imports of certain foreign-produced fish and fish products shall be prohibited by the Secretary of the Treasury if the Secretary of State determines and certifies, among other things, that the foreign nation involved bars United States fishing vessels from its waters, subjects them to conditions and restrictions unrelated to fishery conservation and management, or seizes U.S. fishing vessels in violation of or without authorization under agreement (sec. 205).

Title III of the conference substitute establishes a national fishery management program for the conservation and management of fishery resources subject to exclusive U.S. fishery management authority. The provisions of this title follow the analogous provisions of the House bill and the Senate amendment and are premised upon the conclusion of the committee of conference that fishery resources must be conserved and managed in such a way as to assure that an optimum supply of food and other fish products, and that recreational opportunities involving fishing, are available on a continuing basis and that irreversible or long-term adverse effects on fishery resources are minimized.

Title III follows the House bill and the Senate amendment in setting forth certain national standards with respect to fishery conservation and management, which are to be applied by new Regional Fishery Management Councils and by the Secretary of Commerce in the preparation of fishery management plans and regulations. The conference substitute follows the Senate amendment in directing the Secretary of Commerce to establish guidelines based on these standards to assist in the development of a management plan for each fishery.

Eight Regional Fishery Management Councils are established, as follows, with the States listed in parenthesis as the constituent States thereof and with authority over the fisheries in the waters seaward of the States in the respective such regions:

New England Council (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut).

Mid-Atlantic Council (New York, New Jersey, Delaware, Pennsylvania, Maryland, Virginia).

South Atlantic Council (North Carolina, South Carolina, Georgia, Florida).

Caribbean Council (Virgin Islands, Puerto Rico).

Gulf Council (Texas, Louisiana, Mississippi, Alabama, Florida).

Pacific Council (California, Oregon, Washington, Idaho).

North Pacific Council (Alaska, Washington, Oregon) (with authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska).

Western Pacific Council (Hawaii, American Samoa, Guam).

Each Council shall have voting and nonvoting members. The voting members shall be the principal State official with marine fishery management responsibility and expertise in each constituent State; the regional director of the National Marine Fisheries Service for the geographical area concerned; and a specified number of members re-

quired to be appointed by the Secretary of Commerce from lists of qualified individuals submitted by the Governors of the constituent States. The nonvoting members shall be representatives of the United States Fish and Wildlife Service, of the Coast Guard, of the Marine Fisheries Commissions, and of the Department of State.

Each Council is directed to prepare a fishery management plan for each fishery within its geographical area of authority, with respect to any fish over which the United States exercises exclusive fishery management authority. The required (sec. 303(a)) and discretionary (sec. 303(b)) provisions of each such plan are described in detail. A Council-prepared plan may include such proposed regulations as the Council deems appropriate to carry out such plan (sec. 303(c)). It is mandatory, *inter alia*, that each fishery management plan require the submission of catch statistics and other pertinent data to the Secretary of Commerce, but the conference substitute follows the House amendment in providing that such statistics shall be confidential and only released in an aggregate or summary form which does not disclose the identity or business of the persons making such submissions (sec. 303(d)). Each fishery management plan shall, *inter alia*, (1) specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery involved, and (2) assess and specify the capacity and extent to which U.S. fishing vessels will harvest such optimum yield and the portion of such optimum yield which will not be so harvested and which can be made available for foreign fishing (sec. 303(a)(3) and (4)). Amendments to such fishery management plans may include any matters with respect to the fishery involved which may be included in such a plan, including revised assessments and specifications as to optimum yield and the portion thereof which can be made available for foreign fishing.

The Secretary of Commerce is directed to review and either approve, partially disapprove, or disapprove each fishery management plan submitted to him (and any amendment to an existing such plan). In the case of partial disapproval or disapproval, the Secretary shall return the plan to the originating Council with a request for corrective amendments. The Secretary's review shall be designed to determine whether the fishery management plan is consistent with the national standards for fishery conservation and management, the other provisions and requirements of this legislation and any other applicable law. In carrying out such review, the Secretary shall consult with the Secretary of State (as to foreign fishing) and with the Secretary of the department in which the Coast Guard is operating (as to enforcement at sea). If no fishery management plan is submitted by the appropriate Council within a reasonable period of time, or if corrective amendments to a partially-disapproved or disapproved plan are not submitted within 45 days after notification, the Secretary of Commerce is authorized to prepare the appropriate plan or amendment.

As soon as practicable after the Secretary (1) approves a Council-prepared fishery management plan or (2) prepares such a plan, he shall publish such plan or amendment in the Federal Register together with any regulations which he proposes to promulgate in order to implement it. After a 45-day period for the submission of written data, views, or comments thereon, the Secretary shall implement the plan

or amendment and promulgate such regulations, unless the Secretary schedules a hearing in accordance with 5 U.S.C. 553, on such plan, amendment, and regulations, in which case implementation and promulgation shall take place as soon as practicable after the hearing.

The general responsibility for the carrying out of fishery management plans rests with the Secretary of Commerce (sec. 305(g)), although, with respect to enforcement of the provisions of this Act and of any regulation or permit issued under this Act, that responsibility is shared with the Secretary of the department in which the Coast Guard is operating (sec. 311(a)).

The conference substitute follows the Senate amendment in directing the Secretary of Commerce to initiate and maintain a comprehensive program of fishery research to carry out and further the protection, conservation, and enhancement of United States fishery resources (sec. 304(d)).

The conference substitute follows the House bill in providing for a limited exception to the principle (contained in both the House bill and the Senate amendment) that nothing in this legislation shall extend or diminish the jurisdiction of any State. The conference substitute also specifies that no State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State. The exception in section 306(b) would authorize the Federal government to regulate a fishery (which is predominantly located in waters outside a State's boundaries but in which some fishing occurs within such boundaries) within a State's boundaries if (1) a hearing is held; and (2) the Secretary finds on the basis of the hearing record that any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of a fishery management plan covering such fishery. State regulation would be reinstated as soon as the Secretary finds that the reasons for which Federal regulation was assumed no longer prevail.

The conference substitute contains provisions on prohibited acts, civil penalties, criminal offenses, civil forfeiture, and enforcement, which follow the comparable provisions of the House bill or the Senate amendment, or both.

Title IV of the conference substitute follows the House bill in amending the Fishermen's Protective Act, the Marine Mammal Protection Act of 1972, and the Atlantic Tunas Convention Act of 1975; follows the Senate amendment in repealing the Act of May 20, 1964 (better known as the Bartlett Act) (its substantive provisions are incorporated in the conference substitute), and follows the House bill and the Senate amendment in repealing the Act of October 14, 1966.

Appropriations are authorized to the Secretary to carry out the provisions of this legislation, in the following amounts: \$5 million for the balance of the current fiscal year; \$5 million for the transitional fiscal quarter ending September 30, 1976; \$25 million for the fiscal year ending September 30, 1977; and \$30 million for the fiscal year ending September 30, 1978.

ACKNOWLEDGMENTS

The conferees wish to acknowledge the extraordinary efforts invested in the development of this legislation by its original sponsors—Senator

Warren G. Magnuson and Representative Gerry E. Studds—and by Senator Ted Stevens and Representatives Leonor K. Sullivan, Robert L. Leggett, and Edwin B. Forsythe, the other co-sponsors of the legislation, and the members of the committees involved.

SECTION-BY-SECTION DISCUSSION

Section 2. Findings, Purposes, and Policy

This section follows the analogous provisions of both the House bill and the Senate amendment, with modifications to reflect more precisely the provisions of the conference substitute.

Section 3. Definitions

This section defines the various terms used throughout the conference substitute. The definitions follow, except for minor technical and clarifying changes made necessary by reason of the conference agreement, the pertinent definitions in the House bill and the Senate amendment. Where appropriate to this statement, particular definitions are discussed in relation to the major substantive provisions to which they relate.

The conference substitute follows the House provision and omits the Trust Territory of the Pacific Islands from the coverage of the legislation since it is operated by the United States pursuant to the terms of a trusteeship agreement with the United Nations and is not considered to be a possession of the United States.

The conference committee would like to make it clear that inclusion of American Samoa and Guam within the definition of State would not, and is not intended to, affect the Treasury Department's interpretation of the Nicholson Act (46 U.S.C. 251-252) with regard to American Samoa and Guam.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

Section 101. Fishery Conservation Zone

This section establishes, and defines the boundaries of, the "fishery conservation zone" of the United States. Its inner boundary is a line coterminous with the seaward boundary of each of the coastal States of the United States (the term "State" is defined to include, in addition to the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other U.S. Commonwealth, territory, or possession) and its outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured. The term "seaward boundary" when used in reference to a coastal state has the same meaning as is given to such term in the Submerged Lands Act of 1953 (43 U.S.C. 1301(b)). This provision of the conference substitute is similar to provisions in both the House bill and the Senate amendment.

Section 102. Exclusive Fishery Management Authority

This section follows the substance of the House bill and the Senate amendment in directing the United States to exercise exclusive fishery management authority in the manner provided in this Act over—

(1) All fish within the fishery conservation zone (the definition of "fish" in section 3(6) does not include highly migratory species);

(2) All anadromous species of fish spawned in the fresh or estuarine waters of the United States throughout their migratory range beyond the fishery conservation zone (except when they are found in a foreign nation's territorial sea, fishery conservation zone, or the equivalent to the extent that either is recognized by the United States); and

(3) All Continental Shelf fishery resources of the United States beyond the fishery conservation zone.

It should be noted that the definition of "fishing" in section 3(10) does not include scientific research conducted by a scientific research vessel. The conference committee does not consider the conducting of tests of fishing gear to be scientific research within the meaning of the bill.

Section 103. Highly Migratory Species

This section follows the House bill and the Senate amendment in providing that the exclusive management authority of the United States shall not include, or be construed to extend to, highly migratory species of fish. Highly migratory species are defined in section 3(15) to mean species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean. Since there is no justification for coastal nation jurisdiction over such species, this section declares them subject to management pursuant to international fishery agreements established for that purpose. The conferees believe that current international fishery agreements which regulate tuna are not functioning as adequately as they should, and should be supplemented by stronger international tuna fishery agreements.

Section 104. Effective Date

The effective date of this title is March 1, 1977. The effective date of the comparable provision of the House bill was July 1, 1976, and the effective date of the comparable provision of the Senate amendment was July 1, 1977 for enforcement as to violations. By adopting the effective date of March 1, 1977, for this title, the conferees have provided for a period of transition between passage of the Act and full operation of the provisions of title I. The conferees expect this transition to the new regime established in the Act to occur through negotiations between the United States and affected nations, as described in title II of the Act.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Section 201. Foreign Fishing

This section follows the House bill and the Senate amendment in allowing, and setting prerequisites for and conditions on, foreign fishing for fish subject to the exclusive fishery management authority of the United States.

Section 201(a) prohibits foreign fishing within the fishery conservation zone established by section 101 or for anadromous species or

Continental Shelf fishery resources beyond this zone, unless it is authorized by an existing international fishery agreement (including a treaty), as provided in section 201(b), or by a governing international fishery agreement, as provided in section 201(c). In addition, the reciprocity requirement of section 201(f) must be satisfied, and each fishing vessel of the foreign nation so authorized must have a valid and applicable permit issued for that vessel under section 204, and fish in accordance with the conditions and restrictions of such permit.

Section 201(b) authorizes such foreign fishing to be conducted pursuant to an existing international fishery agreement (other than a treaty) until such time as that agreement expires or pursuant to an existing international fishery agreement treaty until such time as that treaty is renegotiated (to conform it to the purposes, policy, and provisions of this legislation) or ceases to be of force and effect as to the United States.

Section 201(c) authorizes such foreign fishing to be conducted pursuant to a governing international fishery agreement (which is not a treaty) if such agreement is entered into pursuant to this subsection and if it becomes effective following application of section 203 (congressional oversight). The committee on conference intends that governing international fishery agreements will be the primary mechanism through which foreign fishing is authorized. One of the purposes of this agreement is to acknowledge the exclusive fishery management authority of the United States as set forth in this legislation.

It is stated to be the sense of Congress that any such agreement shall set forth certain terms and conditions; *inter alia* (1) that each foreign nation and its vessels will abide by all regulations promulgated by the Secretary of Commerce implementing this Act and any applicable fishery management plan; (2) that each foreign nation and its vessels will abide by all applicable enforcement procedures; (3) that each foreign nation and its vessels will adhere to all requirements for observers to enforce the Act and will pay the cost for such observers; (4) that each foreign nation and its vessels prepay any license fee to the United States; (5) that each foreign nation and its vessels have appointed agents on whom legal process can be served; (6) that each foreign nation will assume responsibility for reimbursement of United States citizens for any loss or damage of their fishing gear or catch caused by any fishing vessel of such nation.

Subsection (a) provides that fishing by foreign nations is limited to that portion of the optimum yield of any fishery subject to the fishery management authority of the United States which will not be harvested by vessels of the United States. The conference committee intends that, in determining whether U.S. fishermen "will not" harvest an optimum yield, the Councils are to give consideration to both the desire and capacity of U.S. fishermen to harvest such yield. Both the optimum yield and the "surplus" to be made available for foreign fishing are to be determined by the appropriate Regional Fishery Management Council or by the Secretary in fishery management plans and amendments to such plans.

Within the total allowable level, of foreign fishing in any fishery, allocations must be made among the various foreign nations interested in such fishing. Section 201(c) provides that the Secretary of State,

in cooperation with the Secretary of Commerce, shall allocate, among foreign nations, the total allowable catch for foreign nations on the basis traditional fishing and other specified factors.

Traditional foreign fishing means long standing, active, and continuous fishing for a particular stock of fish by citizens of a particular foreign nation. Traditional or historic foreign fishing was recognized in the Act of October 16, 1966 (80 Stat. 908), which created the existing nine-mile contiguous fishery zone. Whether any nation has traditionally fished must be determined on a case-by-case basis. Nations which only recently began to fish clearly have not traditionally fished. However, nations whose fishermen have continually fished on a particular stock for a substantial number of years in compliance with any applicable fishery treaties or domestic law would have a strong case for a preference for an allocation of the total allowable level of foreign fishing.

Section 201(f) provides that any nation which seeks fishing authority from the United States must satisfy the Secretary of Commerce and the Secretary of State that it extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the foreign nation is seeking from the United States.

The Secretary is required, by section 201(g), to prepare a preliminary fishery management plan for any fishery if the Secretary determines that no fishery management plan for that fishery will be prepared and implemented before March 1, 1977, accordance with 5 U.S.C. 553, interim regulations. They would be applicable, after March 1, 1977 to foreign fishing in fisheries subject to U.S. authority and would remain in effect until a fishery management plan, prepared by the appropriate Regional Fishery Management Council, is reviewed, approved, and implemented pursuant to the provisions of this Act. The conferees do not intend that this power be used to interfere with, or to preempt, the functions of the Councils in any way. Interim regulations promulgated by the Secretary to implement a preliminary fishery management plan would remain in effect until regulations implementing any fishery management plan are promulgated under section 305.

Section 202. International Fishery Agreements

Neither the House bill nor the Senate amendment calls for the abrogation of existing international fishery agreements. The conference substitute preserves this intent and requires the Secretary of State, in cooperation with the Secretary of Commerce, to enter into negotiations with any nation to conform any agreements to the provisions of the Act. In addition the conference substitute follows the House bill and Senate amendment in directing the Secretary of State, at the request of and in cooperation with the Secretary of Commerce, to enter into negotiations on behalf of United States fishermen who wish to fish within the fishery conservation zone (or for anadromous species or Continental Shelf fishery resources) of any other nation and to seek agreements for the management and conservation of anadromous species and highly migratory species.

At present, the United States is a party to 23 bilateral or multi-lateral treaties and executive agreements. Many are short-lived execu-

tive agreements, negotiated for only one or two years, although in many cases they have been renewed or extended continuously over much longer periods of time. Others are treaties within the meaning of section 2 of Article II of the Constitution.

Section 202(b) directs the Secretary of State, in cooperation with the Secretary, to initiate (promptly after the date of enactment of this legislation), the renegotiation of any treaty which pertains to foreign fishing in waters which will fall within the fishery conservation zone, or to fishing for anadromous species or Continental Shelf fishery resources, in order to conform the provisions of any such treaty to the purposes, policy, and provisions of this Act. Such renegotiation, in the opinion of the committee of conference, would include the filing of notices of intent to withdraw from the International Convention for the Northwest Atlantic Fisheries (ICNAF) and similar such treaties, in accordance with the provisions of such treaties, so that the withdrawal of the United States from such treaties will become effective by March 1, 1977 if such treaties have not been renegotiated to conform with this Act by that date.

Section 202(c) provides that no international fishery agreement (other than a treaty) which is in effect on June 1, 1976 and which pertains to foreign fishing for U.S. fishery resources shall be renewed, amended, or extended, except in accordance with section 201(c) of the Act (which provides for governing international fishery agreements). Application of this particular provision in the Act is delayed until June 1, 1976, in order to permit the continuation of existing arrangements with Canada. Section 202(d) authorizes the Secretary of State, in cooperation with the Secretary, to initiate and conduct negotiations with any adjacent or opposite foreign nation to establish the boundaries of the fishery conservation zone of the United States in relation to any such nation. The immediate and primary concern should be the boundaries with Mexico, Canada, the Soviet Union, and certain Caribbean nations.

Section 202(e) states that it is the sense of Congress that the United States shall not recognize the claim of any foreign nation to a fishery conservation zone (or the equivalent), if (1) such nation fails to consider and take into account the traditional fishing activities of the United States with respect to any fish over which such nation asserts exclusive management authority, (2) fails to recognize and accept that highly migratory species are to be managed by the applicable international fishery agreement, whether or not such nation is party to such agreement, or (3) such nation imposes on fishing vessels of the United States conditions which are unrelated to fishery conservation and management. This provision follows the Senate language in requiring that the U.S. will not recognize jurisdictional claims by any other nation which go beyond that reasonably necessary for management of fishing and which unreasonably exclude fishing by vessels of the United States.

Section 203. Congressional Oversight of Governing International Fishery Agreements

This section follows the House bill in providing for Congressional oversight of, and authority to disapprove, certain international fishery agreements. All international fishery agreements provided for in

section 201(c) must be referred by the President to Congress for a period not to exceed 60 calendar days of continuous session of the Congress after the date of transmittal. No such agreement shall become effective until after the 60-day period. During this 60-day period, the Congress may review such an agreement and, if desired, proceed to consider a joint resolution of either House, the effect of which would be to prohibit the entering into force and effect of such an agreement as transmitted to the Congress.

This section spells out in some detail (1) the process involved in transmitting the documents to Congress; (2) referral to the House Committee on Merchant Marine and Fisheries and the Senate Committees on Commerce and Foreign Relations; (3) the method by which the 60 calendar day period will be computed; (4) the nature of the joint resolution which the Congress can consider with regard to agreements; (5) the time for reporting a "fishery agreement resolution"; and (6) the Congressional procedures involving the rules of the House and Senate for consideration of a joint resolution to disapprove a governing international fisheries agreement.

Section 204. Permits For Foreign Fishing

Section 204 follows the House bill and the Senate amendment in setting forth the procedure to be followed to allow for fishing by foreign vessels in the fishery conservation zone or for anadromous species or Continental Shelf fishery resources beyond such zone. Under section 204(a), no foreign vessel will be permitted to engage in fishing within the fishery conservation zone established by section 101, after March 1, 1977, for any species, except highly migratory species, unless that vessel has on board a valid permit issued by the Secretary under this section. Such a permit will also be required in order for a foreign vessel to fish for anadromous and Continental Shelf fishery resources beyond the fishery conservation zone of the United States.

Section 204(b) sets forth the requirements, procedures, and applicable provisions for the application for and issuance of foreign fishing permits under governing international fishery agreements. Each foreign nation which has entered into such an agreement with the United States shall apply each year for permits for all fishing vessels operating under its flag that wish to engage in any fishing within the U.S. fishery conservation zone or, beyond such zone, for U.S. anadromous species or Continental Shelf fishery resources (para. (1)). The application and permit forms are to be prescribed by the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating (para. (2)). The permit forms will have to be designed in such a way that the issued permit can be "prominently displayed" in the wheelhouse of the vessel for which it is issued; that it contains, in a form suitable for examination by enforcement officers, a statement of all of the conditions and restrictions that are attached to it and which govern fishing by that vessel for fish subject to exclusive U.S. fishery management authority; and that it contains appropriate space for a record of any citations issued under section 311(c) (and a statement of any such citations issued under any previous permits issued for that vessel).

Paragraph (3) specifies the minimum subject-matter content for an application for such permits. Paragraph (4) provides that the Secretary of State shall, when satisfied that a permit application complies with these content requirements, publish the application in the Federal Register and transmit it to the Secretary of Commerce, the Secretary of the department in which the Coast Guard is operating, the appropriate Regional Fishery Management Councils, and designated committees of Congress. Within 45 days after it receives such an application, the applicable Regional Fishery Management Council may comment, as it deems appropriate regarding the application (para. (5)). Such comments may include recommendations regarding approval and suggested conditions and restrictions on the fishing contemplated by the application.

The Secretary of Commerce is required to consult with the Secretary of State and the Secretary of the department in which the Coast Guard is operating about each such application. After taking into consideration the views and recommendations of these officers and those submitted by any of the Councils, the Secretary may approve the application if he determines that the fishing described in the application will meet the requirements of this legislation (para. (6)). After such approval the Secretary of Commerce shall establish specific conditions and restrictions which shall be included in permits issued pursuant to that application (para. (7)). Paragraph (8) directs the Secretary to transmit a copy of each approved application together with all conditions and restrictions imposed on the application to the Secretary of State, to the Coast Guard, to any Regional Fishery Management Council which has authority over any fishery specified in that application, and to designated committees of Congress. Paragraph (9) provides that the Secretary shall promptly inform the Secretary of State in the event that he does not approve such an application; the Secretary of State shall notify that nation of the disapproval and the reasons for the disapproval and shall inform that nation that it may submit a revised application at any time. "Reasonable" fees are to be paid to the Secretary of Commerce by any foreign fishing vessel for which such a permit is issued. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees. These fees must apply without discrimination with respect to any foreign nation and, in determining the amount of the fees, the Secretary may take into account the cost of management, research, administration, enforcement, etc. (para. (10)). As soon as a foreign nation notifies the Secretary of State that it accepts the conditions and restrictions established with respect to its approved application, and upon payment of the applicable fees, the Secretary shall (through the Secretary of State) issue permits for the appropriate fishing vessels of that nation (para. (11)).

Paragraph (12) deals with sanctions relating to permits issued under this subsection (i.e. under a governing international fishery agreement). If a fishing vessel of a foreign nation holding such a permit is used in the commission and any act prohibited by section 307, or if overdue criminal penalties under section 309 or overdue civil penalties under section 310 (pertaining to that vessel) have not been paid, the Secretary may revoke the permit (and may bar future permits

for a specified number of years); may suspend the permit for an appropriate period of time; or may impose additional conditions and restrictions on all of the permits issued to the nation under whose flag that vessel operates. The Secretary is not required to give notice or hold any kind of hearing prior to such permit revocation, suspension, or modification since a hearing will already have been held to determine whether the vessel was in fact used in the commission of a prohibited act (or in the assessment of a civil penalty under section 308(a) or the imposition of a criminal penalty under section 309). If a permit is suspended for nonpayment of a civil penalty, the permit must be reinstated upon payment of that penalty plus interest.

Section 204(c) is the comparable subsection with respect to fishing subject to exclusive U.S. fishery management authority pursuant to an existing international fishery agreement or treaty, to cover the period until that agreement expires or that treaty is renegotiated and is replaced by a governing international fishery agreement under section 201(c). Each fishing vessel of a foreign nation fishing under such an existing agreement or treaty will be issued a "registration permit," upon application, if it wishes to engage in any fishing within the fishery conservation zone of the United States or for anadromous species or Continental Shelf fishery resources of the U.S. beyond that zone. Each registration permit shall set forth the terms and conditions of the international fishery agreement or treaty involved. A registration permit is also subject to the requirement that it be prominently displayed in the wheelhouse of the fishing vessel for which it is issued. The Secretary of State, after consulting with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications may be made for registration permits, and the form thereof. Fees may be charged for registration permits, but the cost may not exceed the administrative cost of issuing them.

Section 205. Import Prohibitions

This section directs the Secretary of State and the Secretary of the Treasury, respectively, to take certain actions in the event the Secretary of State finds that any foreign nation (1) refuses to negotiate or fails to negotiate in good faith to achieve an agreement with the United States, pursuant to which United States fishing vessels could continue to fish for fish subject to such foreign nation's fishery management jurisdiction in accordance with their fishing practices and under conditions and restrictions equivalent to the conditions and restrictions prescribed by the United States for foreign fishing vessels; (2) refuses to allow U.S. fishing vessels to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement; (3) fails to comply with its obligations under any existing agreement concerning fishing by United States fishing vessels for fish subject to such foreign nation's fishery management jurisdiction; or (4) seizes any vessel of the United States while it is fishing in waters beyond that foreign nation's territorial sea under circumstances not recognized by the United States or authorized under international law or an agreement with the United States. In any such case, the Secretary of State shall certify such determination to the

Secretary of the Treasury. Upon receipt of such a certification, the Secretary of the Treasury shall immediately impose import restrictions on fish and fish products from the foreign fishery involved or, upon the Secretary of State's recommendation, on other fish or fish products of such foreign nation. Such a prohibition on imports shall be removed when the Secretary of State finds and notifies the Secretary of the Treasury that the reasons for the imposition of such prohibition no longer prevail. This section follows from a provision in the House bill.

It is the intent of the committee of conference that, for purposes of an import prohibition under this section, all fish which are caught by fishing vessels of the United States are fish or fish products of the United States (regardless of where such fish are caught or off-loaded) and not fish or fish products of the foreign nation involved. Naturally, the owner or operator of such United States flag vessels would be expected to assist the Secretary of the Treasury in identifying fish or fish products as fish caught by United States flag vessels.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

Section 301. National Standards for Fishery Conservation and Management

This section requires that fishery management plans prepared under this Act and regulations promulgated to carry out such plans be consistent with seven specified national standards for fishery conservation and management. These standards, or basic objectives for a viable conservation and management program for the Nation's fishery resources, are designed to assure that management plans and regulations take into account the variability of fish resources, the individuality of fishermen, the needs of consumers, and the obligations to the general public, now and in generations to come. The first of these national standards is regarded by the conferees as being of particular importance. It declares that conservation and management measures shall be designed, implemented, and enforced to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. The term "optimum" is defined in this context (in section 3(18)) to mean the amount of fish from a fishery which, if produced, will provide the greatest overall benefit to the Nation (especially in terms of food production and recreational opportunities) and which is prescribed for that fishery on the basis of the maximum yield sustainable therefrom (a biological measure) as modified by any relevant economic, social, or ecological factor. Except for technical drafting and clarifying changes, this requirement and these standards are the same as those set forth in both the House bill and the Senate amendment.

Subsection (b) of this section follows the Senate amendment in directing the Secretary of Commerce to establish guidelines, based on these national standards, to assist in the development of fishery management plans. In establishing these guidelines, the Secretary shall coordinate the work of the Department of Commerce with formal and informal participation by industry representatives and other knowledgeable and interested individuals.

Section 302. Regional Fishery Management Councils

This section directs the establishment, within 120 days after the date of enactment of this legislation, of eight Regional Fishery Management Councils, as previously described in the "Summary and Description" part of this statement. The House bill and the Senate amendment each provided for the establishment of only seven such councils—the House bill did not provide for a separate Caribbean Council and the Senate amendment did not provide for a separate New England Council. The conference substitute includes both as separate entities, for a total of eight such councils.

Although similar in structure, purpose, and functions, the eight Fishery Management Councils vary in size in terms of the total number of voting members and the number appointed by the Secretary from lists of qualified individuals recommended by the Governors of the constituent States, as follows: New England Council (17; 11); Mid-Atlantic Council (19; 12); South Atlantic Council (13; 8); Caribbean Council (7; 4); Gulf Council (17; 11); Pacific Council (13; 8); North Pacific Council (11; 7, 5 of whom shall be appointed from Alaska and 2 from Washington); Western Pacific Council (11; 7). The voting members appointed by the Secretary from lists of qualified individuals shall serve for 3-year terms, except that the terms of the initial such members shall be staggered. The voting members of the Councils who are not government employees shall be compensated on a daily basis at the GS-18 rate and all voting and certain nonvoting members shall be reimbursed for actual expenses incurred in the performance of duties for the Councils.

Each council shall conduct all meetings and hearings within the geographical area of concern. In the case of the North Pacific Council "in geographical areas of concern" means within the State of Alaska.

Council decisions shall be by majority vote of the members present and voting, with a majority of the voting members constituting a quorum. The voting members of each Council shall select one of their number to serve as Chairman, and each Council shall meet at the call of its Chairman or by request of a majority of its voting members. In case of disagreement, a disagreeing Council member may submit a statement thereof, with reasons, to the Secretary. Each Council is authorized to appoint and obtain staff and administrative support and other services, and it is charged to determine, prescribe, and publish its organization, practices, and procedures. Each Council is directed to establish a scientific and statistical committee and such other advisory panels as are necessary or appropriate.

Each Regional Fishery Management Council is authorized and directed, *inter alia*, to develop fishery management plans and amendments to such plans; to submit periodic and other reports to the Secretary of Commerce; to continually review and revise assessments as to optimum yield and allowable foreign fishing; and to conduct other necessary and appropriate activities, with respect to the management and conservation of the fisheries over which it has authority.

Each Council shall conduct public hearings with respect to the development of fishery management plans and amendments, and with respect to the administration and implementation of the provisions

of this legislation. Each Council is directed to establish scientific and statistical committees and necessary advisory panels to assist in the development or amendment of any fishery management plan. Each advisory panel shall be composed of persons who are either actually engaged in the harvest of, or are knowledgeable and interested in the conservation and management of, the applicable fishery or group of fisheries. The regional Councils and their committees and panels should receive maximum public input. The provisions of the Federal Advisory Committee Act apply, and therefore meetings must be open to the public, with few exceptions. Each Council shall conduct all meetings and hearings within its geographical area of concern. In the case of the North Pacific Council, "in the geographical area of concern" means within the State of Alaska.

The foregoing provisions follow the House bill or the Senate amendment, or both.

Section 303. Contents of Fishery Management Plans

This section specifies the contents of a fishery management plan.

Each fishery management plan is required to include, with respect to the fishery involved—

- (1) necessary management measures governing foreign and domestic fishing, which must be consistent with the national standards and other applicable law;
- (2) a complete description of the fishery, including gear, species, location, management costs, revenue, recreational interests, and existing foreign and Indian harvesting rights;
- (3) an assessment and specification of the fishery's present condition, probable future condition, maximum sustainable yield, and optimum yield, and an assessment and specification of the capacity and desire of the U.S. fishing fleet to harvest this optimum yield and the portion of this optimum yield which will not be so harvested and can be made available to foreign fleets;
- (4) specification of pertinent statistics which must be submitted to the Secretary on fishing effort, gear, species taken, and locations of activity; and

In addition, Councils may, at their discretion, include—

- (1) a permit requirement for each vessel engaged in the fishery;
- (2) designations of the manner in which fishing shall be limited by zones, vessels, or gear;
- (3) catch limitations based on area, species, size, number, weight, sex, or other criteria;
- (4) prohibitions on types of gear, vessels, or equipment, and requirements for utilization of devices facilitating enforcement;
- (5) to the extent practicable, measures for conservation and management presently employed by the nearest States;
- (6) creation of a limited entry system, based on past participation, economic dependence, existing investments, and other factors, provided that a majority of the Council Members present and voting (of the Council concerned) agree; and
- (7) any other provisions which are determined to be necessary for the conservation and management of the fishery.

Councils may also propose regulations necessary to implement fishery management plans.

This section also requires that statistics submitted by the Secretary pursuant to a management plan must not be released to the public in the form of individual records unless pursuant to court order.

The House and Senate provisions for this section were not mutually exclusive and the foregoing provisions utilize parts of both versions.

The required provisions of section 303(a) were taken from the Senate amendment while the discretionary provisions were from the House bill. The proposed regulations in section 303(c) follow the House bill. The provision regarding confidentiality of statistics in section 303(d) is also largely from the House bill, although both the House bill and the Senate amendment were similar on the subject of statistical requirements.

In any case in which a fishery extends beyond the geographic area of authority of any one Council, the Secretary (1) may designate which Council shall prepare the fishery management plan for such fishery, or (2) may require that such plan be prepared jointly by the Councils concerned (sec. 304(f)). The House bill provided for the Secretary to designate which Council would prepare the management plan, and the Senate amendment directed the Councils concerned to coordinate or combine their efforts.

Section 304. Action by the Secretary

Section 304 represents an amalgam of the House and Senate versions.

Section 304(a) provides that within 60 days after receiving a fishery management plan submitted by a Council, the Secretary must review the plan and notify the Council as to whether he approves, partially disapproves, or disapproves of the plan. A Council has 45 days to amend a plan wholly or partially disapproved.

Section 304(b) provides that, in reviewing a plan, the Secretary must examine it for consistency with the national standards, the provisions of the Act, and other applicable law. Consultation with the Secretary of State and with the Coast Guard is provided for where their areas of responsibility are affected.

Section 304(c) authorizes the Secretary of Commerce to prepare a fishery management plan or amendment if (1) a Council fails to prepare a plan for a fishery in need of conservation, or (2) if the Secretary partially or wholly disapproves of a plan submitted by a Council and the Council fails to make necessary changes. If the Secretary prepares his own plan, the Council has 45 days to recommend changes; thereafter, the plan is implemented by the Secretary. However, the Secretary is prohibited from preparing a plan which includes a limited entry system unless such system has been first approved by a majority of the voting members of each appropriate Council.

Section 304(d) directs the Secretary to set, by regulation, the level of any fees which may be changed under fishery management plans for U.S. fishing vessels. This level cannot exceed the Secretary's administrative costs in issuing these permits.

Section 304(e) directs the Secretary of Commerce to initiate and maintain a program of fisheries research. This new research effort is required to include, but need not be limited to, biological research con-

cerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

Section 305. Implementation of Fishery Management Plans

This section sets forth the process for implementation of fishery management plans, including a period for written comment, authorization for hearings, judicial review, and emergency action and includes certain general provisions on the responsibility of the Secretary of Commerce to carry out such plans and to report thereon annually to the Congress and the President.

As soon as practicable after the Secretary approves a fishery management plan or amendment prepared by a Council, or prepares such a plan or amendment (in accordance with section 304), the Secretary is directed to publish that plan or amendment in the Federal Register along with any regulations he proposes to promulgate to implement that plan or amendment. The Secretary shall afford interested persons at least 45 days within which to submit, in writing, data, views, or comments with respect to the plan or amendment and the proposed regulations (sec. 305(a)). The terms "fishery management plan" and "regulations" are not used interchangeably in this Act. In this Act, the fishery management plan is the comprehensive statement of how the fishery is to be managed, including time and area closures, gear restrictions, and the like. "Regulations", as used in this Act, means the regulations promulgated to implement what is contained in the fishery management plan.

Section 305(b) authorizes the Secretary to schedule and conduct a public hearing under 5 U.S.C. 553 and any plan, amendment, or proposed implementing regulations and to postpone the effective date of the regulations pending such hearings. The conferees anticipate that the Secretary will not normally hold hearings on fishery management plans prepared by the Regional Fishery Management Councils inasmuch as the plans (and amendments thereto) are themselves the product of mandatory public hearings by the Councils. However, hearings may be appropriate in cases (1) in which written submissions are received asserting that the proposed regulations are inconsistent with the plan to be implemented thereby, (2) in which the plan was prepared by the Secretary himself under section 304(c), or (3) in which there are controverted issues of material fact.

Section 305(c) directs the Secretary to promulgate regulations to implement a fishery management plan, or an amendment to such a plan, after review and consideration of all matters raised in the written submissions and any oral presentations, if he finds that the plan or amendment is consistent with the national standards, the other provisions of this legislation, and any other applicable law.

Regulations to implement a fishery management plan are subject to judicial review under the Administrative Procedure Act (5 U.S.C. ch. 7), if a petition for judicial review of such regulations is filed within 30 days after the date of promulgation except that the reviewing court is without authority to enjoin the implementation of those regulations pending the judicial review and such regulations may only be set aside if found to be arbitrary and capricious. (sec. 305(c)).

Section 305(d) authorizes certain emergency actions to save fishery resources if the Secretary finds that any emergency involving any fishery resources exist. Emergency regulations, or emergency amendments to a fishery management plan, are only effective for a maximum of 45 days with authority to repromulgate for one additional 45-day period. Emergency regulations are subject to judicial review on the same basis as implementing regulations.

The Secretary is directed to prepare, not later than March 1 of each year, an annual report of fishery conservation and management (sec. 305(e)), and he is given "general responsibility to carry out a fishery management plan or amendment" (sec. 305(f)), including the authority to promulgate regulations to discharge that responsibility or to carry out any other provision of this Act.

The implementation process provisions follow comparable provisions in the House bill and the Senate amendment, except that (1) the mandatory-hearing provision in the House bill (whenever objections are filed by a citizen who may be adversely affected or whenever requested by a State) is not included in the conference substitute in favor of an optional-hearing provision; and (2) the provisions in the Senate amendment establishing a 5-member, President-appointed "Fishery Management Review Board" to determine appeals from regulations promulgated by the Secretary is not included in the conference substitute in favor of judicial review.

Section 306. State Jurisdiction

The conference substitute follows the House bill in providing for a limited exception to the principle (contained in both the House bill and the Senate amendment) that nothing in this legislation shall extend or diminish the jurisdiction of any State. The conference substitute also specifies that no State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State. The exception in section 306 (b) would authorize the Federal Government to regulate a fishery (which is predominantly located in waters outside a State's boundaries but in which some fishing occurs within such boundaries) within a State's boundaries if (1) a hearing is held; and (2) the Secretary finds on the basis of the hearing record that any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of a fishery management plan covering such fishery. State regulation would be reinstated as soon as the Secretary finds that the reasons for which Federal regulation was assumed no longer prevail.

Section 307. Prohibited Acts

This subsection sets forth the prohibited acts.

Under paragraph (1), it is unlawful for any person to violate any provision of this legislation or any regulation promulgated under this legislation; to violate any condition or restriction of a permit issued pursuant to this legislation or to fish upon revocation or during the suspension of such a permit; to violate any provision of a governing international fishery agreement entered into pursuant to this legislation; to refuse to permit any authorized officer to board a fishing vessel under such person's control for purposes of carrying out any

search or inspection relating to the enforcement of this Act or of any regulation or permit issued under this Act; to use force to assault or otherwise interfere with such an officer who is engaged in such a search or inspection or to resist a lawful arrest for any act prohibited by this subsection; or to ship, purchase, sell, etc., any fish taken or retained in violation of this Act or any regulation or permit issued under this Act. Under paragraph (2), it is unlawful for any foreign fishing vessel, or for its owner or operator to engage in fishing within the territorial waters of the United States or (unless such fishing is authorized by a permit issued pursuant to section 204) to engage in fishing within the fishery conservation zone or for anadromous species or for Continental Shelf fishery resources. This subsection follows the House bill and the Senate amendment and the Bartlett Act provisions are incorporated as part of this Act in view of the repeal of that statute.

Section 308. Civil Penalties

This section empowers the Secretary of Commerce to levy a civil penalty against any person who is found, after notice and an opportunity for a hearing in accordance with 5 U.S.C. 554, to have committed an act prohibited by section 307. The amount of the civil penalty could not exceed \$25,000 for each violation, but each day of a continuing violation constitutes a separate offense for this purpose. The actual amount of the civil penalty would be at the discretion of the Secretary, after he has taken into consideration the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

If a civil penalty is assessed against any person under subsection (a) of this section, that person may seek review of the penalty in the appropriate Federal court by filing a notice of appeal within 30 days of such an order. If the Secretary's decision is not found to be supported by substantial evidence, as provided in 5 U.S.C. 706(2), the penalty shall be set aside by the court.

Subsection (c) requires the Attorney General of the United States to recover, in an action in an appropriate U.S. District Court, the amount of any assessed civil penalty after it has become a final and unappealable order or after judgment in favor of the Secretary in a review filed under subsection (b). In such an action by the Attorney General, the validity and appropriateness of the final order imposing the civil penalty would not be reviewable by the district court.

Subsection (d) authorizes the Secretary to compromise, modify, or remit any civil penalty which may be or has been imposed.

This section follows the House bill.

Section 309. Criminal Offenses

Criminal offenses are provided for certain prohibited acts, as follows:

A person who refuses to permit an authorized enforcement officer to board, for purposes of inspection, a fishing vessel under his control; who forcibly assaults, resists, opposes, intimidates, or interferes with any such officer who is engaged in such an inspection; or who resists a lawful arrest for any act prohibited under section 307,

shall be fined not more than \$50,000, or imprisoned for not more than 6 months, or both. If, however, such a person uses a deadly or dangerous weapon in the course of such conduct, he shall be fined not more than \$100,000 or imprisoned for not more than 10 years, or both.

A person who commits any act prohibited by section 307(2) shall be fined not more than \$100,000 or imprisoned for not more than 1 year, or both. This provision follows the Senate amendment and the criminal penalty provision currently in the Bartlett Act, which the conferees agreed to repeal (as proposed by the Senate amendment) following the incorporation of its pertinent substantive provisions, including this one, in the conference substitute.

Section 310. Civil Forfeitures

Section 310(a) provides that any vessel (including its fishing gear, furniture, appurtenances, cargo, and stores) may be forfeited to the United States if it is used in any manner in connection with or a result of the commission of any act prohibited by section 307, and that all fish taken or retained in connection with or as a result of any such prohibited act shall be forfeited to the United States, under this section. Forfeiture, does not lie, however, if the relevant prohibited act was one for which the issuance of a citation under section 311(c) is sufficient sanction.

Any district court of the United States shall have jurisdiction, upon application by the Attorney General, to order any forfeiture authorized under subsection (a) and any seizure-related action authorized under subsection (a). (Sec. 310(b)).

Subsection (c) incorporates by reference, with respect to forfeiture under this section, the relevant provisions of the customs laws, except that the duties and powers involved shall be performed by officers or other persons designated by the Secretary of Commerce.

Subsection (d) prescribes the procedure to be followed when process in rem is issued under this Act. The execution of such process shall be stayed, and any fish seized in case of levy shall be released, upon the posting of a bond with security satisfactory to the court involved, conditioned upon delivery of the fish seized or the payment of the monetary value of such fish.

Subsection (e) follows the Senate amendment in specifying that it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

This section is an amalgam of pertinent provisions of the House bill and the Senate amendment.

Section 311. Enforcement

Section 311(a) provides that the responsibility for enforcing this legislation and any management regulations and fishing permits issued under this legislation rests with the Secretary of Commerce and the Secretary of the department in which the Coast Guard is operating (i.e., the Secretary of Transportation, in peacetime). The two Secretaries are authorized to employ for this purpose not only the resources of their respective departments but also, by agreement on a reimbursable or other basis, the personnel, services, equipment, and facilities of any other Federal agency and of any State agency. The conference sub-

stitute specifically provides that the utilizable equipment of other agencies includes aircraft and vessels and that the Federal agencies required to cooperate in such enforcement include all elements of the Department of Defense. With respect to State agencies, however, it is the understanding of the conferees that State officers will be employed widely in assisting in the enforcement of this Act; however, in general it is expected that such State officers will be employed primarily in areas proximate to their own States and where Federal personnel are unavailable. The two Secretaries are required to report semiannually to the duly authorized committees of the Congress and to the Regional Fishery Management Councils on the degree and extent of compliance. Where indicated, these reports may include recommendations (i.e. for amendments to applicable fishery management plans) which may increase compliance, facilitate the detection of violators, or reduce delay.

Section 311(b) specifies the powers of any officer who is authorized to enforce the provisions of this Act, by the Secretary of Commerce, by the Secretary of the department in which the Coast Guard is operating, or by any agency which has entered into an enforcement agreement with the two Secretaries. Any such officer may, with or without a warrant, arrest any person upon reasonable cause to believe that such person has committed an act prohibited by section 307; board and search or inspect any fishing vessel subject to the fishery management authority of the United States; seize any fishing vessel used or employed in the violation of any provision of this Act; seize any fish taken or retained in violation of any such provision; and seize any other evidence related to any such violation. Any such officer may also execute any warrant or other process issued by any officer of court of competent jurisdiction and exercise any other lawful authority.

Subsection (c) provides for a less drastic sanction in cases of technical or minor violations. Instead of citing the master of fishing vessel for a violation of section 308(a), an authorized enforcement officer may issue a warning to the master of such vessel. Any such warning shall be noted by the officer on the permit issued to such vessel and a record of all such citations shall be maintained by the Secretary of Commerce. The two Secretaries shall, by jointly-issued regulations, provide guidelines for the use of this "citation" power as an alternative to arrest, seizure, forfeiture, etc.

Section 311(d) grants exclusive jurisdiction, and appropriate powers, over all cases arising under this legislation to the district courts of the United States.

Section 311(e) defines "provisions of this Act" and "violation" broadly for purposes of this section only. The remedies provided by this Act, however, are all tied to the commission of an act prohibited by section 307.

The conference substitute is a composite of the enforcement provisions of the House bill and the Senate amendment.

Section 312. Effective Date of Certain Provisions

This section provides that the effective date of the enforcement-related provisions of title III (sections on prohibited acts, civil penalties, criminal offenses, civil forfeiture, and enforcement) shall be March 1, 1977. See above under section 104.

TITLE IV—MISCELLANEOUS PROVISIONS

Section 401. Effect of Law of the Sea Treaty

This section follows a provision in the House bill authorizing the Secretary of Commerce to promulgate such changes in regulations under this Act as may be necessary or desirable to conform such regulations to the fishery management jurisdiction provisions of a comprehensive treaty, if any, resulting from the Third United Nations Conference on the Law of the Sea, if such treaty is ratified by the United States and in anticipation of its taking effect.

Section 402. Repeals

This section repeals, effective March 1, 1977, (1) the Act of October 14, 1966, which established the 9-mile contiguous zone, and (2) the Act of May 20, 1964, as amended, commonly known as the Bartlett Act, which prohibited certain foreign fishing. The conference substitute follows the House bill and the Senate amendment with respect to (1) and the Senate amendment with respect to (2).

Section 403. Fishermen's Protective Act Amendments

The conference substitute follows the House bill with respect to amending the Fishermen's Protective Act (Act of August 27, 1954).

The House bill provided for reimbursement resulting from the seizure of an American fishing vessel, if the vessel had fished in such nation's waters in the past, for the particular stock of fish involved. Concern was expressed by the committee of conference that such a provision might actually encourage seizures of American fishing vessels and that it would endorse fishing by American vessels in a foreign nation's waters under circumstances which would not be allowed with respect to fishing subject to the exclusive fishery management authority of the United States. The conference substitute authorizes such reimbursement only if the conditions and restrictions applied to U.S. vessels are more stringent than the conditions and restrictions applied to foreign fishing vessels by the United States.

Section 404. Marine Mammal Protection Act Amendment

This section follows the House bill in amending the term "waters under the jurisdiction of the United States" in the Marine Mammal Protection Act of 1972 to encompass the waters within the fishery conservation zone of the United States, as declared in title I of this legislation.

The provision amending the Marine Mammal Protection Act is not intended to alter U.S. obligations under any existing international agreement which applies to the taking of marine mammals, for example, those applying to whales or fur seals. The conferees desire also that the Secretary of State vigorously pursue the international program for marine mammal protection provided for in the Marine Mammal Protection Act. The amendment made by this section takes effect March 1, 1977.

Section 405. Atlantic Tunas Convention Act Amendment

This section follows the House bill in amending the term "fisheries zone" in the Atlantic Tunas Convention Act of 1975 to mean the fishery conservation zone of the United States, as declared and defined in title I of this legislation. The amendment takes effect March 1, 1977.

Section 406. Authorization of Appropriations

The House bill authorized the appropriation of "such sums as may be necessary" to carry out the purposes of this legislation. The Senate amendment authorized the appropriation of a total of \$49.5 million (through September 30, 1977) to the Secretary of Commerce and a total of \$29.25 million (through September 30, 1977) to the Secretary of the department in which the Coast Guard is operating. The conference substitute authorizes the appropriation to the Secretary of Commerce of not to exceed (1) \$5 million for the fiscal year ending June 30, 1976, (2) \$5 million for the transitional fiscal quarter ending September 30, 1976, (3) \$25 million for the fiscal year ending September 30, 1977, and (4) \$30 million for the fiscal year ending September 30, 1978.

The committee of conference intends that this authorization of appropriations shall be in addition to, and not in substitution for, any other appropriations authorized for fisheries management, research, and development etc. While large, the sums involved are minute by comparison with the benefits attainable.

Authorizations for Coast Guard enforcement expenditures under this act will be included in the annual Coast Guard Authorization Acts.

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ERNEST F. HOLLINGS;
EDMUND S. MUSKIE,
THOMAS J. MCINTYRE,
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TED STEVENS,
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LOWELL P. WEICKER, JR.,
BOB PACKWOOD,

Managers on the Part of the Senate.

LEONOR K. SULLIVAN,
JOHN D. DINGELL,
THOMAS N. DOWNING,
ROBERT L. LEGGETT,
GERRY E. STUDDS,
PHILIP E. RUPPE,
EDWIN B. FORSYTHE,

Managers on the Part of the House.



MAGNUSON FISHERIES MANAGEMENT
AND CONSERVATION ACT

R E P O R T

OF THE

SENATE COMMITTEE ON COMMERCE

ON

S. 961

TO EXTEND, PENDING INTERNATIONAL AGREEMENT, THE
FISHERIES MANAGEMENT RESPONSIBILITY AND AUTHOR-
ITY OF THE UNITED STATES OVER THE FISH IN CERTAIN
OCEAN AREAS IN ORDER TO CONSERVE AND PROTECT
SUCH FISH FROM DEPLETION, AND FOR OTHER PURPOSES



OCTOBER 7 (legislative day, SEPTEMBER 11), 1975.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

MAGNUSON FISHERIES MANAGEMENT AND CONSERVATION ACT

OCTOBER 7 (legislative day, SEPTEMBER 11), 1975.—Ordered to be printed

Mr. MAGNUSON, from the Committee on Commerce,
submitted the following

REPORT

[To accompany S. 961]

The Committee on Commerce, to which was referred the bill (S. 961) to extend, pending international agreement, the fishery management responsibility and authority of the United States over fish in certain ocean areas in order to conserve and protect such fish, and for other purposes, having considered the same, reports favorably thereon with an amendment [and an amended title] and recommends that the bill as amended do pass.

PURPOSE

The purpose of the Magnuson Fisheries Management and Conservation Act is to protect and conserve valuable and necessary fishery resources. Fishery resources, which contribute to the Nation's food supply, economic strength, health, and recreation, are today threatened, and the Nation's fisheries are depressed industries, because of over-fishing, and because of the absence of adequate fishing management and conservation practices and controls.

BRIEF DESCRIPTION

The bill seeks to restore and maintain the fisheries by—

(1) granting the United States exclusive fishery management jurisdiction (A) within a "fishery conservation zone" that would extend 200 nautical miles from the Nation's coasts, (B) over

anadromous species of fish (*e.g.* salmon) that spawn in U.S. rivers and streams, and (C) over U.S. Continental Shelf fishery resources (title I); and

(2) establishing and enforcing a national fishery management program (title II).

Title I is a temporary law title designed to meet the emergency situation which exists (and which will continue to exist until agreement is reached) because of the failure of the first and second sessions of the U.N. Law of the Sea Conference in Caracas and Geneva to reach international agreement on nation-state jurisdiction over fishery resources. As soon as a Law of the Sea treaty (or similar agreement) is signed by the United States and made effective (or provisionally applied), title I will "cease to be of any legal effect" (section 104). The Committee does not intend to interfere with or to preempt pending negotiations aimed at such a treaty, but rather it wants to preserve the fisheries until such time as an international agreement is in force. Fishery resources are limited, but renewable. If placed under sound management before over-fishing has caused irreversible effects, the fisheries can be restored and maintained for the benefit, not only of this Nation, but of all mankind. For the United States to procrastinate about the fisheries until agreement is reached on a treaty would be to risk such "irreversible effects". Such a postponement would constitute an irresponsible act.

The provisions of title I are not only temporary, pending international agreement, but they are also consistent with the developing consensus within the Conference. The bill establishes a U.S. "fishery conservation zone" which will have the seaward jurisdiction of the coastal States as its inner boundary, and a line 200 nautical miles from the baseline from which the territorial sea is measured as its outer boundary. Within that zone, the United States would exercise exclusive fishery management authority so long as title I is in effect. (But the existing ocean jurisdiction of the United States would be maintained without change for all purposes other than the management and conservation of fishery resources—section 2(c)(1).) Under title I, the United States would also exercise exclusive fishery management authority over (1) anadromous species from U.S. rivers and streams through the migratory range of such species, except when they are found within any other nation's equivalent of the U.S. fishery conservation zone; and (2) fishery resources found on the Nation's Continental Shelf (as defined in section 3(5)).

Title I explicitly provides that highly migratory species of fish (*e.g.* tuna) are not within the exclusive management authority of the United States (section 101(d)). Such species "shall be managed solely pursuant to international fishery agreements established for such purpose."

Title I further provides for foreign fishing within the U.S. fishery conservation zone, and for anadromous species and Continental Shelf resources. Foreign fishing is permitted, but title I establishes the principle of preferential rights for persons fishing from vessels of the United States. Foreign fishing is authorized as to the available surplus, with respect to any applicable stock of fish. The Secretary of State is authorized and directed to seek international agreements to effectuate the purpose, policy, and provisions of the bill, and he is to review

existing international agreements to determine whether they are consistent with this legislation; if not, the Secretary of State is directed to initiate negotiations to amend or terminate them.

The bill also includes a permanent law title, title II. Title II establishes a national fishery management program for the management and conservation of fishery resources. This program is premised upon the committee's conclusion that the Nation's fishery resources must be conserved and managed in such a way as to assure that a supply of food and other fish products is available on a continuing basis and so that irreversible or long-term adverse effects on fishery resources or on the marine ecosystem are rendered highly unlikely. The best way to achieve these necessary goals is to establish a partnership between the Federal Government and the governments of the coastal States.

Title II sets forth certain national standards for fishery management and conservation. The standards are to be applied by seven newly-created Regional Fishery Management Councils (one for each major ocean area) in the development of management plans for each fishery determined to be in need of management and conservation and in the development of recommended regulations for the management and conservation of fish within each Council's geographic area of authority. These fishery management plans and recommended regulations are to be reviewed by the Secretary of Commerce to determine whether they are consistent with (A) the national standards, and (B) the provisions and requirements of this bill and any other applicable law. If so, the Secretary shall promulgate the management regulations in accordance with section 553 of title 5, United States Code; if not, the Secretary shall notify the applicable Council, and necessary changes shall be made by that Council or by the Secretary, and then so promulgated. If the Secretary determines that an emergency exists requiring immediate action in the national interest to protect any fishery resources, the Secretary shall, as soon as practicable, prepare and promulgate directly any necessary "emergency management regulations". Coastal States and interested members of the general public may nominate fisheries for regulation, by submitting statements to the Secretary. The Secretary is directed to review the actions of the Regional Fishery Management Councils and to maintain a fisheries research program.

Regional Fishery Management Councils are established for each of the following areas. Each Council shall consist of representatives of the States listed in parenthesis:

North Atlantic Council (Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia), for fisheries in the Atlantic Ocean seaward of these States.

South Atlantic Council (North Carolina, South Carolina, Georgia, Florida), for fisheries in the Atlantic Ocean seaward of these States.

Gulf Council (Texas, Louisiana, Mississippi, Alabama, Florida), for fisheries in the Gulf of Mexico seaward of these States.

Pacific Council (California, Oregon, Washington, Idaho, Alaska), for fisheries seaward of California, Oregon, and Washington.

Caribbean Council (Virgin Islands, Puerto Rico), for fisheries in the Caribbean seaward of these States.

North Pacific Council (Alaska, Washington), for fisheries in the northern Pacific Ocean seaward of Alaska.

Outer Pacific Council (Hawaii, American Samoa, Guam, Trust Territories of the Pacific), for fisheries seaward of these States.

Each Council shall "reflect the expertise and interests of the several identified States in the ocean area over which such Council is granted authority". (section 202(b)). The President, by and with the advice and consent of the Senate, is to appoint the members of the Regional Councils, upon the recommendations of the Governors of the respective States. The President shall, in addition, appoint a Federal Government employee to serve on each Regional Council, upon the recommendation of the Secretary of Commerce. In addition to identifying fisheries in need of conservation within its area and developing fishery management plans and recommended regulations, each Council shall select a chairman; may appoint an executive director and other staff; shall conduct public hearings on its plans, programs, and regulations; to monitor fishing activity within its geographic area of authority; may carry out such other functions as are necessary and appropriate for the effective management and conservation of fishery resources; and shall report and may make recommendations to the Secretary of Commerce. The Secretary is directed to provide each Council with "such administrative support as is necessary for effective functioning". (section 202(d)). Each Council shall also establish a scientific and statistical committee composed of 6 fisheries scientists and experts and the appropriate regional research director of the National Marine Fisheries Service (who shall serve as chairman). Each Council shall further establish a management committee with respect to each individual fishery.

According to the national standards, which shall form the basis of all fishery management plans and management regulations, management and conservation measures shall (1) prevent overfishing and assure, on a continuing basis, the optimum yield from a fishery; (2) be based upon the best scientific information available; (3) regulate an individual stock of fish throughout its range as a unit and regulate interrelated stocks of fish as a unit or in close coordination, to the extent possible; (4) not discriminate between residents of different States; (5) where appropriate, promote efficiency in the utilizing of fishery resources; (6) allow for unpredicted variations in fishery resources and their environment and for contingencies and possible delays in application; and (7) where appropriate, minimize research, administration, and enforcement costs and avoid unnecessary duplication. The Secretary of Commerce is directed to establish guidelines, based on the national standards, for the Councils to follow in developing their management plans and recommended regulations.

Each fishery management plan shall include a description of the fishery involved; a summary of scientific knowledge as to the present and probably condition of this fishery, including the maximum sustainable yield therefrom; an assessment of the capacity of vessels of the United States to harvest the optimum yield from this fishery and projections as to the surplus which can be made available for foreign fishing; and any other relevant material. Management regulations might include provisions establishing zones, fishing seasons, catch quo-

tas, licenses, gear and vessel requirement, access limitations, or other measures.

It is inevitable that disputes will arise with respect to fishery management decisions. To meet the need for dispute settlement, the bill establishes a Fishery Management Review Board. The Board, an independent quasi-judicial administrative body, would review disputes between the Secretary and the Regional Councils, as well as other disputes relating to fishery management decisions.

This bill is not intended to extend the jurisdiction of the coastal States over natural resources beyond their seaward boundaries, or to diminish the jurisdiction of these States within their own boundaries. This provision preserves the present division of authority between the States and the Federal Government, as established by the Submerged Lands Act (43 U.S.C. 1301-1343).

Title III contains provisions on prohibited acts and penalties, enforcement, and authorizations, for appropriations. The bill would authorize an amount not to exceed \$22,000,000 to the Secretary of Commerce for 2 years for the execution of his duties under the bill (including support for the Councils and the Review Board), and \$13,000,000 to the Coast Guard for the execution of its enforcement responsibilities.

HISTORY AND BACKGROUND

Background and Need

According to traditional international law, each sovereign nation has the same legal right to fish anywhere on the high seas, which are defined as those waters which are outside the territorial waters of any coastal nation. Living resources located in the high seas are considered to be 'common property' resources *i.e.* they are open for fishing by all, and owned by everyone, until in the possession of the catcher.

Until recently, this traditional rule of law created workable arrangement for harvesting the fish resources of the ocean. However, in the last 25 years, as fishery technology has become more sophisticated, and as fishermen have learned that the resources of the sea are not inexhaustible, this rule has been increasingly questioned.

Specific multilateral or bilateral international agreements for the conservation of fisheries are relatively recent developments in the history of the law of the sea. They represent a response to the inability of the traditional rule to conserve fish or to settle controversies between nations.

In 1608, Hugo Grotius, a Dutch lawyer, first enunciated the principle of freedom of fishing on the high seas. For almost 350 years, thereafter, any nation could take fish from the sea with little concern for the future. Fish have traditionally been "hunted" rather than "farmed" as a consequence of their designation as 'common property' and because of the corollary proposition that nobody "owns" fish in the sea. Until relatively recently, management systems were not thought to be needed to protect the continued viability of stocks. About 1940, as fishing efforts around the world intensified, the concept of total freedom of fishing on the high seas began to erode.

The history of the "law of the seas" is viewed by international lawyers as a process of "continuous interaction; of continuous demand and response." It is a developing system: unilateral claims are put forward,

the world community weighs the claims, and the world community either accepts or rejects them. International law is also developed through the treatymaking process, either through general international agreement on a particular issue or through bilateral agreements reflecting a general legal trend. Since 1940, the treatymaking process has been active.

A myriad of bilateral or regional arrangements seeking to control fisheries have been negotiated. In 1958 and 1960, attempts were made to reach universal agreement on conservation of the living resources of the sea, in the first and second Law of the Sea Conferences. For the most part, these efforts to achieve clear legal principles regarding ocean fishery resources have been failures in the sense that they have neither halted nor prevented the depletion of some of the most valuable species of ocean fish.

Truman Proclamation

The United States first touched off the most recent series of unilateral declarations of fisheries jurisdiction beyond the territorial sea. President Harry S. Truman, in his "Presidential Proclamation With Respect to Coastal Fisheries in Certain Areas of the High Seas," delivered September 28, 1945, set the stage, as follows:

In view of the pressing need for conservation and protection of fisheries resources, the Government of the United States of America regards it as proper to establish conservation zones in those areas of the high seas contiguous to the coast of the United States wherein fishing activities have been or in the future may be developed and maintained on a substantial scale * * * and all fishing activities in such zones shall be subject to regulation and control. * * * The right of any State to establish conservation zones off its shores * * * is conceded. * * * The character as high seas of areas where such conservation zones are established and the right to their free and unimpeded navigation are in no way thus affected. * * *

The motivating purpose behind President Truman's proclamation was conservation. The proclamation represented a response to the incursion of Japanese fishermen into the Alaska Bristol Bay red salmon fishery. Chile responded quickly to the Truman Fisheries Proclamation by declaring its own jurisdiction over the seas adjacent to its coast to a distance of 200 miles.

The Truman Fisheries Proclamation was never, however, implemented into law. According to the "Digest of International Law," the proclamation *per se* asserts no claim to exclusive fisheries jurisdiction over high seas fishing areas off the coast of the United States. Instead, it is stated, the purpose of the fisheries proclamation was to establish, as U.S. policy, that where fishing activities were developed or maintained jointly by the United States and other nations, conservation zones would be established—but only pursuant to agreement between the United States and such other nations. The domestic implementation of this proclamation has been mainly through State Department attempts to negotiate international agreements to protect certain species of fish, which were threatened by the Japanese, most notably the salmon. Since that time, except for a treaty with Canada on sockeye salmon concluded in 1930, the United States has negotiated

all of the 22 fishery treaties presently in existence (see app. I.). Also, since that time, approximately 36 nations have declared exclusive fisheries zones beyond 12 nautical miles. (See app. II.)

International Treaties

In 1958 the international community negotiated 4 separate treaties regarding the law of the sea. These treaties represented an attempt to codify uncertain international rules. The principal objective of the 1960 meeting was to resolve the issue of the limits of territorial sea or fisheries jurisdiction. The question of fisheries proved to be the point on which nations could not agree, and no specific limits were agreed upon. At that time, the practice of most nations supported a 3-mile territorial limit with a 12-mile fisheries zone. (Now, however, the practice of numerous nations reflects support for a 12 mile territorial with a 200-mile fisheries zone.)

Following the 1958 and 1960 sessions of the first Conference on Law of the Sea, there has been a trend away from a completely *laissez-faire* policy for fishing on the high seas, particularly in coastal waters outside the territorial sea. This trend was recognized in the Convention on Fishing and Conservation of the Living Resources of the High Seas which was signed by the delegates attending the Conference. Article I of the convention states that the right of all nations to fish on the high seas is a fundamental freedom. But the convention also recognizes the special right of coastal nation to unilaterally adopt conservation measures off its shores, even in areas of the high seas, under certain, yet rather strict, conditions. The extent of coastal nation fishery management authority was the most troublesome issue discussed at the 1958 and 1960 meetings. Broad fishery jurisdiction was not approved, the Convention on Fishing representing the only compromise achievable at the time. Nonetheless, the beginnings of a trend were evident.

Following the Conference, there were new and renewed international disputes over fishing rights: A "lobster war" broke out between France and Brazil over lobster resources on the Brazilian Continental Shelf. The "tuna war" between the United States and several Latin American countries continued over the tuna, which occasionally roam into and through the 200-mile zones claimed by these Central and South American countries. The "cod war" between Iceland and Great Britain heated up, causing great strain within the North Atlantic Treaty Organization. More nations claimed exclusive fishery zones beyond the 12-mile limit. In 1967, the United Nations decided to convene a new Law of the Sea Conference.

The recent International Court of Justice decision (1973), in a controversy growing out of the "cod war" is particularly instructive in evaluating the developing customary international law on fishery jurisdictions. While the Court said that Iceland could not unilaterally exclude British vessels from its claimed 50-mile fishery conservation zone, it did state:

State practice on the subject of fisheries reveals an increasing and widespread acceptance for the concept of preferential rights for coastal States, particularly in favour of countries or territories in a situation of special dependence on coastal fisheries. * * *

The International Court went on to say that the content and scope of this preferential right must be worked out in negotiation with other countries fishing in coastal areas. The Court also emphasized that:

[T]he preferential rights of the coastal State come into play only at the moment when an intensification in the exploitation of fishery resources makes it imperative to introduce some system of catch-limitation and sharing of those resources, to preserve the fish stocks in the interests of their rational and economic exploitation. * * *

International law with regard to the geographical extent of coastal nation fishery jurisdiction is in a state of flux. Some legal experts still claim that the international law limit on coastal nation fishery jurisdiction is 12 nautical miles, but only because they do not feel that enough nations, have adopted the 200-mile limit. Few legal experts dispute, however, the fact that the trend is in that direction, and almost all scientists agree on the precarious biological status of many of the world's fish stocks. The Third Law of the Sea Conference, now underway, will, in all likelihood, agree to a coastal fishery jurisdiction limit of 200 nautical miles.

The Third Law of the Sea Conference, and the Position of the United States

In 1968, the United Nations resolved to make yet another attempt at developing a consensus on the law of the sea. On June 20, 1974, after several years of preparatory meetings, the United Nations convened the Third Law of the Sea Conference in Caracas, Venezuela. A second session convened in 1975 in Geneva, Switzerland. A third session will convene in New York City on March 29, 1976. One of the most contentious issues before the Conference is the extent of jurisdiction coastal nations can exercise over fisheries off their shores.

As a matter of policy, for the last several years the United has adamantly opposed any extension of fishery jurisdiction beyond 12 miles. The executive branch has generally supported the principle of freedom of the seas as being in the best interest of the Nation. This attitude is attributable to strong naval interests, the need to import large amounts of energy and raw materials by water, and long distance fishing interests, notably tuna and shrimp. Strictly coastal fishing interests have taken a back seat to global interests. Consequently, the U.S. position was, until quite recently, the so-called "species" approach, designed to assert no geographical fisheries jurisdiction. Under this proposal, coastal nations would be given regulatory jurisdiction over coastal and anadromous species of fish, together with preferential rights to as much fish as they can catch. The actual limit of coastal jurisdiction over these species would be determined by the species' location, not by any arbitrary geographical line. In those instances where a coastal nation is not harvesting all of the fish that can be taken, based on maximum sustainable yield, all nations would be permitted to fish for the surplus, after payment of an administrative fee. Migratory species would be placed under management by an international body.

The U.S. "species approach" position generated little support among the international community. Accordingly, in 1974, the United States

enunciated a new position. On July 11, 1974, Ambassador John R. Stevenson, Special Representative of the President and U.S. Representative to the Law of the Sea Conference stated the new position as follow, on July 11, 1974:

In the course of listening to and reading the statements made during the last 2 weeks, I have been struck by the very large measure of agreement on the general outlines of an overall settlement. Most delegations that have spoken have endorsed or indicated a willingness to accept, under certain conditions and as part of a package settlement, a maximum limit of 12 miles for the territorial sea and of 200 miles for an economic zone, and an international regime for the deep sea bed in the area beyond national jurisdiction.

The United States has for a number of years indicated its flexibility on the limits of coastal state resource jurisdiction. We have stressed that the content of the legal regime within such coastal state jurisdiction is more important than the limits of such jurisdiction. Accordingly, we are prepared to accept, and indeed we would welcome general agreement on a 12 mile outer limit for the territorial sea and a 200-mile outer limit for the economic zone provided that it is part of an acceptable comprehensive package including a satisfactory regime within and beyond the economic zone and provision for unimpeded transit of straits used in international navigation.

Ambassador Stevenson went on to state further that:

For fisheries, to the extent that the coastal nation does not fully utilize a fishery resource, we contemplate coastal nation duty to permit foreign fishing under reasonable coastal state regulations. These regulations would include conservation measures and provisions for harvesting by coastal state vessels up to their capacity and would include the payment of a reasonable license fee by foreign fishermen. We also contemplated duty for the coastal state and all other fishing states to cooperate with each other in formulating equitable international and regional conservation and allocation regulations for highly migratory species, taking into account the unique migratory pattern of these species within and without the zones.

The thrust of this new position is that the United States is ready to accept, as part of an acceptable overall treaty package, the concept of 200 miles for fishery management jurisdiction. However, acceptance would be conditioned upon satisfactory resolution of a number of issues of high importance to the U.S. delegation. In effect, the United States has conceded that the 200-mile limit will be accepted by the law of the Sea Conference and has turned its attention to defining the relationships between the coastal notions and the international community within that 200-mile limit.

The Geneva session of the conference did not reach agreement but it did produce a "single negotiating text," or draft treaty, to be the basis for negotiations in the next session. The fishery provisions of the single negotiating text, if adopted, would afford the United States more than enough authority to implement S. 961.

(1) The Failure of International Fishery Agreements

The primary goal of any international fishery agreement should be the conservation of fish. With few exceptions, however, such agreements have not achieved this result. Ambassador Donald McKernan (then Special Assistant to the Secretary of State for Fisheries and Wildlife) concluded, in a paper reprinted in "World Fishery Policy" (1972), that "current international, national, and state conservation efforts are not successfully preventing the depletion of fisheries resources of the greatest economic importance."

The normal process of negotiating an international fishery agreement is time consuming and complex. The economic pressure caused by sizeable investments in large fishing fleets makes many nations reluctant to curtail fishing even in face of incontrovertible evidence of stock decline. Most international agreements fail to provide for strong enforcement mechanisms and they are only as powerful as the signatory nations make them. For example, at the annual International Commission for the Northwest Atlantic Fisheries (ICNAF), in June 1975, the members nations agreed to a 650,000 metric-ton quota for all fishing, but excluded the squid quota from this limit. Previously, squid quota (set at 74,000 tons for the coming season) had been included in the overall quota. Northwest Atlantic Fisheries have been in an over-fished condition for some years. The United States has objected to this quota because (1) at least a full decade would be required for stock recovery at the quota level; and (2) excluding squid from the overall quota would not permit effective control of the incidental catch of fin-fish associated with the squid fishery, which means that more over-fishing would likely occur.

(2) The World Community is Ready to Adopt a 200-Mile Limit but Final Action Will Come Only After a Long Delay

Enactment of the bill is necessary even though the U.S. delegation supports a 200-mile fishery zone and there is a prospect of a law of the sea treaty in the future. Primary among the reasons why S. 961 is considered necessary by the Senate Commerce Committee is that the world community including the United States, seems ready to adopt the 200-mile limit. The real question is *when*. Because of the great potential for delay in concluding a treaty, overfishing is bound to continue without action soon. Moreover, it is possible that long-distance fishing nations which have made substantial investments in large and technologically advanced fleets will become very uncertain about future access to a coastal nation's 200-mile zone, and therefore will step up their efforts to capture fish on the high seas as long as the limits remain narrow.

The committee is quite concerned about the effect of delay in the implementation, ratification, and effective date of any new convention that may be negotiated in the Law of the Sea Conference and which will most likely contain a 200-mile fishery limit provision. If the previous law of the sea treaties are any benchmark, an effective treaty may be several years away. Three of the four conventions signed in 1958 entered into force between 4 and 6 years after signature in Geneva. The fourth, the Convention on Fishing and Conservation of the Living Resources of the High Seas, entered into force only in 1966, fully 8

years after it was signed. In all likelihood the world will be confronted with a substantial interim period between agreement and a final, effective treaty. S. 961 is intended to fill that gap by providing the United States with authority to manage the fish off its shores during this interim period.

(3) International Agreements Are Not Uniformly or Stringently Enforced

In those instances where agreements are reached, the problem of enforcement has been serious. Traditionally, international fishery agreements provide for enforcement by each signatory nation as to its citizens. For example, if a Soviet fleet is operating off U.S. shores pursuant to the ICNAF agreement, it is the duty of Soviet officials to enforce that agreement on their citizens. It is easy to see, however, why a nation which has directed its fishing fleet to return high quotas of fish may not enforce full compliance with international agreements. In many cases, it would appear that effective sanctions are completely lacking and violations often go unpunished by the flag nation. Meanwhile, U.S. fishermen see themselves as being tightly regulated by U.S. officials to comply with U.S. responsibilities under any international agreement.

Furthermore, it is difficult to image that a nation, with a long-distance fishing industry which can operate in any part of the world ocean, would ever be strongly concerned with conserving fishery resources off another nation's shores. In contrast, fishermen who live a relatively short distance from a fishing ground have a stronger interest in preserving the fish stocks which inhabit the waters near their home. To a large extent, S. 961 is founded on the rationale that a coastal nation has a much greater stake in preserving stocks of fish within 200 nautical miles of its shores, anadromous species of fish, and Continental Shelf fishery resources.

The United States today is a signatory party to 22 international fishing agreements. The United States periodically engages in bilateral and multilateral negotiations with foreign nations to restructure these agreements and to frame new ones for conserving fishery resources. Committee has found that such agreements, while useful and occasionally successful, have not been successful enough in solving the problem of overfishing on a timely and effective basis. Congressional action in the form of S. 961 is therefore very necessary.

(4) The Importance of Fisheries to the United States

According to the National Marine Fisheries Service in the Department of Commerce, 20 percent of all marine fisheries in the temperate and subarctic shelf areas of the world (where most of the fisheries are located) are found within 200 miles of the U.S. coasts. Consequently it can be said that the large stocks of fish inhabiting coastal waters constitute one of the richest natural resources of the Nation.

Despite the presence of this resource, the Department of Commerce, in its draft national fisheries plan, described the following broad trends:

While the world catch continues to increase in response to growing world and U.S. demands for fisheries products, the U.S. catch remains static.

Foreign fishing off U.S. coasts has increased dramatically in recent years with the result that some fish stocks have become depleted.

The United States is becoming increasingly dependent upon imports of fisheries products, a circumstance contributing to the Nation's unfavorable balance of payments.

Large segments of the U.S. harvesting industry are in a chronically depressed state, generally at zero growth or in decline.

Public participation in marine angling and related marine activities is growing steadily and is expected by 1985 to be twice that of 1970.

As United States consumption of fish increases, the United States is forced to rely increasingly on fish imports because American fishing lags behind that of other nations.

While the U.S. share of the world catch of fish has been declining, consumption of fish and fishery products has been increasing. In 1969, residents of the United States consumed 1.94 million metric tons of seafood and in 1970 consumed 2.8 million metric tons, an increase of almost 45 percent. To meet the difference between what domestic fishing fleets catch and the demand for fish products, the United States has imported an expanding amount of fish from other countries. To give some idea of the growth of imports, in 1950 the United States imported only 23.4 percent of its seafood while in 1972 imports were over 60 percent. Although the United States has only 6 percent of the world's population and catches 2.5 percent of the total world catch of seafood, its residents consume about 7 percent of the world's seafood production. This desire of seafood led to a 1972 adverse balance of payments of \$1.3 billion in fish and fisheries products—a 43 percent increase over 1972 and up 318 percent since 1960.

In short, fisheries play a large role in the national diet, but our domestic fishing fleet is catching less and less of the fish consumed as more and more is being demanded. Meanwhile, the most important and valuable species of fish are being depleted. Dr. Robert M. White, Administrator of the National Oceanic and Atmospheric Administration, has warned that by 1980 the world's fishing fleets are expected to catch 100 million metric tons of fish. According to Dr. White, scientists feel that 100 million metric tons is the maximum number of fish capable of being taken from the sea without biological harm to world breeding stocks. World fleets now harvest, according to the most reliable figures, 70 million metric tons of fish. It is clear to the committee that if we are indeed to prevent the elimination of an important source of protein for the United States and the world, strong action must be taken to prevent further overfishing and to bring technologically advanced fishing efforts under control.

Figures 1 and 2 depict the importance of the United States as a coastal fishing nation and the landings and value of U.S. fish and shellfish.

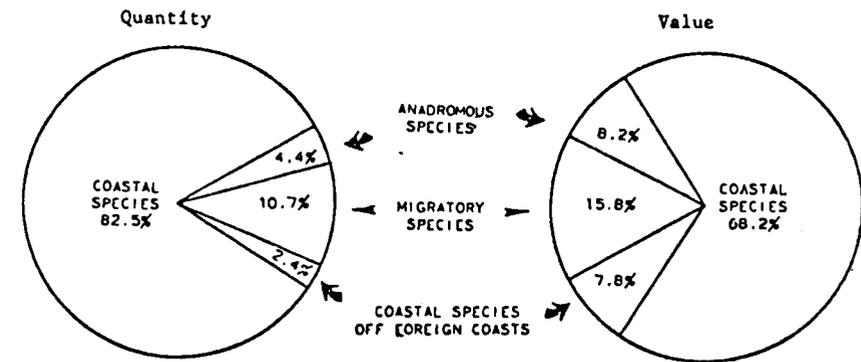


FIGURE 1.—Importance of the United States as a coastal fishing nation.

Fishery	Quantity		Value	
	Million pounds (1)	Percent (2)	Million dollars (3)	Percent (4)
Coastal species.....	4,037.7	82.5	522.1	68.2
Anadromous species.....	216.7	4.4	62.8	8.2
Migratory species.....	524.4	10.7	120.6	15.8
Coastal species off foreign coasts.....	115.3	2.4	60.0	7.8
Total.....	4,894.1	100.0	765.5	100.0

FIGURE 2.—Landings and value of U.S. fish and shellfish by major groupings, 1972.

As pointed out earlier, the controversy in the Pacific Northwest concerning the efforts of Japanese vessels to harvest Bristol Bay salmon stocks was the impetus for the Truman Fisheries Proclamation and, in effect, the beginning of serious U.S. concern over foreign fishing efforts off its shores. Following World War II, the United States, Canada, and Japan negotiated and signed the International North Pacific Fisheries Convention, designed to deal, at least in part, with the added pressure on salmon stocks. The salient agreement in this Convention, which still has implications for fishing policies today, was the agreement by Japan to abstain from fishing for salmon east of the 175th west meridian. At that time, it was felt that if the Japanese abstained from catching North American salmon stocks east of that line, the stocks would be protected. However, since then, it has been shown that the salmon range far beyond the boundary line and Japan is able, because of its technologically advanced fishing capabilities, to catch a large number of salmon before they reach the abstention line.

It was not until the late 1950's and early 1960's that the rest of the Nation began to feel the pressure from growing numbers of foreign fishing trawlers. A good example is the New England fishing grounds. Before 1960, the Georges Bank fishing area was used exclusively by U.S. fishing vessels, except for a few Canadian fishermen. In 1961, Soviet fishing vessels reported taking 68,000 tons of fish off Georges Bank. By 1965, Soviet exploitation had expanded to the Continental Shelf area of Georges Bank down to the Chesapeake Bay and their catch reached over a half million tons, far in excess of the U.S. catch. By 1970, several other countries had joined in the harvest and the

foreign take grew to more than 1 million tons, far in excess of the allowable harvest recommended by the scientists of the United States and other countries. The U.S. share began to decline and today our fleets take only about 12 percent of the catch in the southern New England area and only 10 percent from the Georges Bank area. (See fig. No. 3.) In 1960, the United States took 92.9 percent of the total catch off the Atlantic coast. By 1972, the U.S. share of the total catch had been reduced to 49.1 percent.

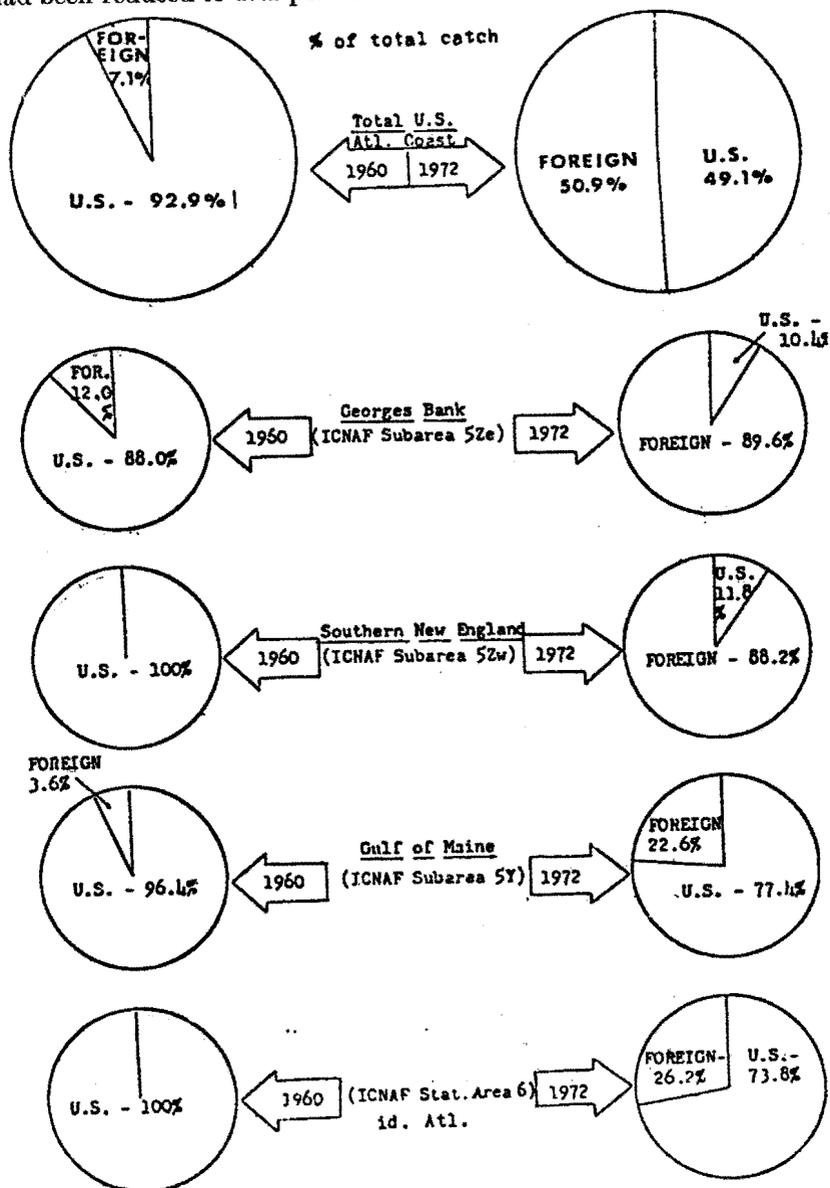


FIGURE 3

Source: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, June 1973.

Since 1950, world production of fish multiplied threefold from 20 million metric tons to about 63 million metric tons in 1969, but the U.S. share of the catch has remained at a relatively fixed level, between 2 and 2.2 million tons. In short, while the U.S. take of fish off its shores has remained relatively stable, perhaps even declining in certain geographical locations, foreign efforts have increased monumentally over the past 15 years to extremely high levels.

After the experience of massive fishing effort on a renewable but finite resource, scientists have now concluded that approximately 25 stocks of fish are overfished or threatened with overfishing. The testimony received by the Commerce Committee has substantiated the very real threat to many of the most valuable stocks off our shores. At the request of the Committee staff, a list was prepared by fisheries scientists identifying specific fisheries stocks which are either in an overfished state or in serious danger. Nearly all of these stocks is presently covered by some sort of negotiated fisheries arrangement, treaty, or some type of Executive agreement. The following is the list, not necessarily complete, of stocks damaged or threatened off the U.S. coasts at present and of direct interest to U.S. fishermen:

Atlantic: Haddock, Herring, Yellowtail flounder.

Pacific: Mackerel, Sablefish, Shrimp.

Atlantic (but not Gulf of Mexico): Menhaden.

Atlantic and Pacific: Halibut.

Three other species, although presently of lesser interest to U.S. fishermen, are also severely damaged—Alaska pollock (Pacific), yellowfin sole (Pacific), and hake (Pacific).

(5) *There is a Need for Management and Conservation in an Extended Fisheries Zone on the Federal Level*

In the past, management of fisheries within the jurisdiction of the United States has been left to the individual States. Furthermore, the Federal Government quitclaimed any ownership interest it might have had over fishery resources within State boundaries in the Submerged Lands Act (43 U.S.C. 1311). The Federal Government has acted in a supportive capacity, undertaking fishery research and providing coordination between States. Further, despite the enactment in 1966 of a 12-mile contiguous fishery zone, implementing legislation to give the Federal Government authority to manage fisheries in the zone has not been enacted. However, the Federal Government does manage fishing beyond U.S. jurisdiction in the sense that it concludes international fishing agreements which control U.S. fishermen.

A national fishery management program, creating comprehensive management authority, must be an integral part of an extension of U.S. jurisdiction to 200 nautical miles. Managing fishery resources within this expanded jurisdiction will require government effort of large proportions. In essence, S. 961 is designed to substitute U.S. fishery management for the present arrangement of bilateral and multilateral agreements for an interim period of time. There is little doubt but that this will be a large, indeed monumental, and complex undertaking. For an assertion of fishery jurisdiction founded on excessive fishing to really work, it must be accompanied by a serious management effort. Consequently, the committee recognizes that the United States must prepare itself to shoulder a new and expanded role as protector and manager of some of the world's most prolific and

valuable fishing grounds and stocks of fish. S. 961 contains provisions designed to carry out this responsibility in partnership with the individual States and with due regard for traditional foreign fishing activity.

Further discussion of this subject can be found in the report entitled "Fishery Management Under a 200-mile Jurisdictional Limit" prepared for the Committee on Commerce by the Congressional Research Service of the Library of Congress.

(6) *The Effect of S. 961 on the Tuna, Shrimp, and Salmon Industries*

The principal objections to S. 961 have come from (1) domestic fishermen who seek tuna and shrimp off other nations shores, and (2) part of the salmon industry. The long-distance fleet owners fear that enactment of S. 961 will eradicate the traditional U.S. policy of freedom of fishing up to 12 miles from any foreign nation's shoreline, a change of policy seemingly already made by Ambassador Stevenson's speech. The salmon industry, on the other hand, fears that if the United States asserts a 200-mile fishing limit and jurisdiction over anadromous species of fish, a series of events will occur leading to increased capture of salmon by foreign nations, particularly the Japanese. First of all, they feel that assertion of jurisdiction over anadromous species will simply not be recognized by nations fishing for salmon on the high seas. They claim that once the United States declares a 200-mile limit, the Japanese will abrogate the International North Pacific Fisheries Treaty and fish for salmon inside the abstention line, up to the edge of the 200-mile zone. They fear that Japan has the capacity to take a substantial portion of the salmon returning to the United States, thereby greatly reducing the domestic catch. However, the Committee believes that the Japanese do not place as much emphasis on the capture of salmon as they do on the capture of other fish they presently take from within the 200-mile limit (e.g. pollock). If the United States would assert a 200-mile fishing limit, substantial leverage for ending high seas capture of salmon in return for possible access into the 200-mile limit could be gained.

In regard to the opposition of the tuna interests, the obvious trend is toward a 200-mile fishing zone. S. 961 deals with the tuna situation by declaring that highly migratory species, e.g. tuna, are more properly regulated by international agreements and that coastal nations have no authority to prescribe regulations for the taking of tuna, even though these fish may be found within their 200-mile limit.

As for the shrimp industry, experience has shown that bilateral treaties for access into other countries fishery zones can be negotiated. The Brazil Shrimp Fisheries Agreement is one example. Also, S. 961 indicates that the United States is willing to accept traditional fishing rights of foreign nations within its zone. Logically, it follows that the United States would expect reciprocity from other countries for recognition of traditional U.S. fishing rights.

(7) *S. 961 Will Ultimately Reduce International Fishing Disputes*

It is anticipated that opposition to S. 961 from the Department of State will be based on the bill's potential for creating confrontation with foreign nations which fish off our shores. The Committee expects that certain nations indeed will be reluctant to reduce their fishing

effort in areas within 200 miles of U.S. coasts. However, the passage of S. 961, in the long run, will contribute to world order and will remove a source of international conflict which has not been eliminated by any other approach. Establishment of the 200-mile limit will go a long way toward ending the "cod wars" and "tuna wars" which have been disruptive of international relations over several decades, and longer. It will begin the path to stabilization of coastal fishery management limits and bring about more certain rules for the conduct of fishing operations. And, in the opinion of the Committee, the bill will provide an incentive to concluding, as soon as possible, a comprehensive law of the sea treaty, the preferred solution to the question of fishery jurisdiction.

(8) *Summary*

As a result of the Committee's examination of the question of fisheries jurisdiction, it has concluded that: (1) the following stocks of fish of direct interest and importance to U.S. fishermen have been overfished—haddock, herring, mackerel, menhaden, sable fish, shrimp, yellowtail flounder, and halibut. It is also noted that the pollack, yellowfin sole, and hake, although of lesser importance to U.S. fishermen, have also been overfished; (2) the overfishing of these stocks of fish are in large measure attributable to massive foreign fishing efforts in waters immediately off the shores of the Nation; (3) international fishery agreements to which the United States is party and which purport to regulate and control fishing efforts on overfished stocks have been ineffective in that goal; (4) a generally acceptable treaty on marine fisheries management jurisdiction will not be negotiated, signed, ratified, and implement until late in this decade and there is danger of further overfishing of other stocks; and (5) therefore, the United States in its own interest and in the interest of preserving threatened stocks of fish must take emergency action to manage, regulate, and control the taking of fish within 200 nautical miles of its shore, and the taking of anadromous species of fish and Continental Shelf fishery resources beyond such limit, pending international agreement on an acceptable treaty.

SECTION-BY-SECTION ANALYSIS

Section 1. (Short Title)

This act may be cited as the "Magnuson Fisheries Management and Conservation Act."

Section 2 (Declaration of Policy)

In subsection (a), Congress finds and declares that the coastal species of fish which inhabit the waters off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf, and the anadromous species which spawn in U.S. rivers and estuaries, constitute a valuable and renewable natural resource. This resource also contributes to the food supply and economy of the Nation as well as to health and recreation.

The Congress further finds and declares that, as a consequence of increased fishing pressure and because of the absence of adequate fishing management practices and controls, certain stocks of fish have been

overfished and others substantially reduced in number. International agreements have not prevented this decline in fishery resources, and further danger of overfishing exists prior to the conclusion of a binding treaty on fishery management jurisdiction.

The Congress further finds and declares that commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent on fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources. At the same time, management of fisheries as common property resources has led to the use of excessive amounts of capital and labor in many fisheries. As a result, the profits earned by individual fishermen are low, potential economic benefits to the Nation are lost, and the fisheries are depressed industries.

The Congress still further finds and declares that fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be restored and maintained so as to provide optimum yields. Therefore, a national program for management and conservation of the fishery resources subject to the jurisdiction of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

In subsection (b), the purposes of Congress are described: (1) to take immediate action to protect and conserve the fishery resources of the Nation by declaring management and conservation authority over such resources in a 200-nautical-mile zone off the coasts of the United States; (2) to extend the exclusive management jurisdiction of the United States over the fishery resources of the Continental Shelf and over anadromous species of fish which spawn in the rivers and estuaries of the United States; and (3) to establish a national fishery management program to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

In subsection (c), the policy of Congress is set forth: (1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the management and conservation of fishery resources, as provided in the Act; (2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, other than that necessary for the management and conservation of fishery resources, as provided in the Act; (3) to support and encourage international agreements for the management of highly migratory species of fish and to manage such species when found within the 200-mile zone on the basis of regulations adopted pursuant to such agreements; and (4) to assure that the national fishery management program (A) utilizes, and is based upon, the best scientific information available; (B) involves, and is responsive to the needs of, interested and affected citizens; (C) promotes efficiency; (D) minimizes the costs of research, administration, management, and enforcement; and (E) is workable and effective.

Section 3. (Definitions)

1. "Anadromous species" means those species of fish which spawn in fresh or estuarine waters of the United States but which migrate to ocean waters. Examples are salmon and shad.

2. "Board" means the Fishery Management Review Board established under section 204 of this act.

3. "Coastal species" means all species of fish which inhabit the waters off the coasts of the United States, other than highly migratory species and anadromous species. This definition is not identical with the biological definition and is not meant to be. Rather it is a legal definition solely for the purposes of this Act.

4. "Conservation" refers to all the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild and maintain, and useful in rebuilding and maintaining, fishery resources and the marine environment; and (B) which are designed to assure that (i) a supply of food, and other products, and recreational benefits, may be taken or obtained therefrom on a continuing basis; (ii) irreversible or long-term adverse effects on fishery resources, or on the marine ecosystem as a whole, are highly unlikely; and (iii) there will be a multiplicity of options available with respect to future use of these resources. The term "conservation" is interchangeable with the term "management." This definition serves to outline several of the goals of the national fishery management program.

5. "Continental Shelf fishery resources" means living organisms of sedentary species which, at the harvestable stage, are either (1) immobile; (2) in the seabed; or (3) unable to move except in constant physical contact with the seabed or subsoil of the Continental Shelf of the United States. Pursuant to the Convention on the Continental Shelf (15 UST 471; TIAS 5578), the United States exercises sovereign rights over its Continental Shelf for the purpose of exploring for and exploiting natural resources, including fishery resources. The definition of "Continental Shelf fishery resources" used in this act is the same as that contained in the Convention. The Act of May 1964 (78 Stat. 196) presently authorizes the Secretary of Commerce to name the species fitting the above definition. That Act was recently amended to define statutorily certain species as Continental Shelf fishery resources, mainly so as to include the American lobster (*Homarus americanus*) in the definition. The definition used in this act will continue in force existing law on this subject.

6. "Council" means a Regional Fishery Management Council established under section 202 of the act.

7. "Fish" means all living marine organisms, including, but not limited to, finfish, mollusks, crustaceans, marine mammals, and all other forms of marine animal and plant life (but not including birds). Used in conjunction with the term "coastal species," it would include all forms of plant and animal life normally found in coastal waters and of interest to the Nation. Again, this definition is not meant to reflect the biological definition of fish. Combining all such resources in a single term is simply a useful drafting technique.

8. "Fishery" means (1) one or more stocks of fish which can be identified as a unit for purposes of management and conservation and which are so identified by the appropriate Council and the Secretary on the basis on geographic, scientific, technical, recreational, and economic characteristics, and (2) the business, organized activity, or act of fishing for such stocks. The term is broadly defined to take account of the multitude of fishing practices. A fishery can include fishing effort directed toward (1) a single stock of fish found in a certain

area; (2) different stocks of fish sought by the same vessels; (3) all the stocks in a certain area, and so on. There can be, and often is, a great variety in value, abundance, habits, methods of capture, and potential yield, from one fishery to the next. For example, both recreational and commercial fishermen participate in fisheries seeking such fish as flounder, salmon, cod, striped bass, bluefish, king mackerel, shrimp, bluefin tuna, and swordfish. Some fisheries, such as the domestic sailfish fishery, primarily involve recreational fishermen, while others, like the squid fishery, involve only commercial fishermen. Variations exist even within some purely commercial fisheries such as where there is competition among users of different kinds of fishing gear. For example, lobsters are taken offshore by both traps and bottom-trawls. It is intended that the Secretary and the Councils select the proper units for management on a case-by-case basis.

9. "Fishery conservation zone" means a zone contiguous to the territorial sea of the United States within which the United States exercises exclusive fishery management and conservation authority. The concept of a fishery conservation zone, or contiguous fishery zone, is one currently recognized in both domestic and international law. In 1966, Public Law 89-659 (the so-called Bartlett Act) was enacted establishing a 9-mile fishery zone contiguous to the 3-mile territorial sea of the United States. It is common practice among the coastal nations of the world to assert fishery jurisdiction in ocean areas beyond their territorial waters (see app. II). As the concept is used in this act, a fishery conservation zone is a special purpose jurisdictional zone, i.e., a geographic area within which legal competence to control, regulate, and establish rights of access to fish is asserted for the specific purpose of conserving fishery resources. It is not an assertion of territorial jurisdiction, a concept which approaches plenary authority. Consequently, it does not change the status of the waters included within the zone for uses and activities other than fishing.

10. "Fishing" means the catching, taking, harvesting, or attempted catching, taking, harvesting, of any fish for any purpose other than scientific research, and any activity at sea in support of such actual or attempted catching, taking, or harvesting.

11. "Fishing vessel" means any vessel, boat, ship, contrivance, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing.

12. "Fishing-support vessel" means any vessel, boat, ship, contrivance, or other craft which is used for, equipped to be used for, or of a type which is normally used for, aiding or assisting one or more fishing vessels at sea in the performance of any support activity (except a scientific research vessel), including, but not limited to, supply, storage, refrigeration, or processing.

13. "Foreign fishing" means fishing by a vessel other than a vessel of the United States. The determinant is the flag of the vessel. If the vessel flies the flag of, i.e., is registered in, a foreign nation, it is included in the term.

14. "High seas" means waters beyond the territorial sea or the fishery conservation zone (or the equivalent thereof) of any nation. This definition is not the same as that contained in the Convention on the High Seas (13 UST: TIAS 5200) which defines the high seas as all

parts of the sea that are not included in the territorial sea or in the internal waters of a nation.

15. "Highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate in waters of the ocean. Tuna are pelagic fish and are wide ranging in their migrations. For example, stocks of skipjack tuna, found throughout the eastern tropical Pacific Ocean, migrate through the waters of Central and South America and the central Pacific. Because of the extensive migration of tunas and the mobility of sophisticated tuna fleets, these highly migratory species cannot successfully be managed except by agreements which cover these fish, and fishermen, wherever they might go. In addition, unlike anadromous and coastal species, tuna have no special nexus to any coastal nation which gives rise to a claim of exclusive ownership.

16. "International fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party. The term is intended to include executive agreements not subject to the advice and consent of the Senate.

17. "National standards" means the national standards for management and conservation set forth in section 201(a) of the Act.

18. "Optimum," with respect to the yield from a fishery, means the amount of fish (1) which, if produced, will provide the greatest benefit to the Nation, and (2) which is prescribed as such by the appropriate Council and the Secretary on the basis of the maximum sustainable yield from such fishery as modified by any relevant economic, social, and/or ecological factors. All forms of sound fishery management involve the preservation of a portion of a fish stock as brood stock to provide resources for future harvests. In the past, most fishery management has sought to achieve the maximum sustainable yield from a fishery. The maximum yield (primarily a biological term) is achieved when the annual catch from a fishery is at the highest level, in terms of number or weight of fish caught, which can be sustained without harming the reproductive ability of the stock and which assures a similar level of harvest in the next year. However, many experts believe that use of the maximum sustainable yield objective in fisheries management may lead to substantial economic waste and may ignore important environmental relationships between stocks from which yields cannot be maximized simultaneously. It seems more desirable therefore to adopt the objective of optimum yield, defined to include the maximum yield as the basic standard of reference, as modified by relevant economic, social, and/or ecological factors. However, the Committee does not intend that these modifying factors should be used to institute management measures which permit overfishing on a continued basis. Although it may be conceivable that a situation may occur in which a yield higher than the maximum sustainable might be defensible, this would seem rare and should be only temporary. In almost every other instance, the optimum yield should be equal to or below the maximum sustainable yield. It is intended that determining the optimum yield of each fishery ought to be within the discretionary powers of the Councils and the Secretary.

19. "Person" has the meaning set forth in section 1 of title 1, United States Code, and, in addition, includes any government, including a foreign government, any entity of a government, and a citizen of a foreign nation.

20. "Secretary" means the Secretary of Commerce, or his delegate. The Committee expects that many, if not all, of the authorities and responsibilities given the Secretary under this Act will be delegated to the National Oceanic and Atmospheric Administration and the National Marine Fisheries Service.

21. "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and many other territories and possessions of the United States.

22. "Stock" means, with respect to any fish, a type, species, or other category capable of management as a unit.

23. "United States," when used in the geographical context, includes all States.

24. "Vessel of the United States" means any boat, ship, contrivance, or other craft, however propelled or moved, which is (1) designed, used, or capable of being used for navigation on or under water, and (2) documented under the laws of the United States or which is registered under the laws of any State.

TITLE I—FISHERY MANAGEMENT JURISDICTION OF THE UNITED STATES

Section 101. (Extent of Jurisdiction)

Subsection (a) establishes, and defines the boundaries of, the fishery conservation zone contiguous to the 3-mile territorial sea of the United States created by this Act. Within the fishery conservation zone, the United States would exercise exclusive fishery management authority. This authority is exclusive in the sense that no other nation may regulate fishing within the zone, although vessels of other nations may be allowed to engage in fishing, in accordance with the Act, within the zone.

The boundaries of the zone are drawn so as to place the zone outside the seaward boundaries of the individual coastal States, but not more than 200 nautical miles from the U.S. coastline. The seaward boundaries of the coastal States are defined in section 2 of the Submerged Lands Act (43 U.S.C. 1301). In all cases, except with respect to Texas and Florida in the Gulf of Mexico where their seaward boundaries are 9 miles from shore, State boundaries are located 3 miles from the coast. The shore or coastline is the baseline from which the territorial sea is measured as set forth in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639). Although this creates an anomaly with respect to Texas and Florida, it preserves the domestic breakdown of management authority between the States and the Federal Government which has prevailed since the founding of the republic. For the purposes of this act, the waters which are within the boundaries of Texas and Florida, but which are beyond the 3-mile territorial sea of the United States, shall be deemed to be part of the territorial sea.

Subsection (b) states that the United States would exercise, throughout their range, exclusive fishery management authority over anadromous species of fish spawned in the fresh and estuarine waters of the United States. However, exclusive U.S. authority would not apply to such fish while they are found in the territorial sea or the fishery conservation zone (or the equivalent thereof) of any other nation, as such is recognized by the United States.

The assertion of exclusive authority over anadromous species of fish is meant to apply when such fish are found on the high seas beyond the U.S. fishery conservation zone, but outside the jurisdiction of any other nation. It is anticipated that the United States will use this authority to ban any capture of anadromous species of fish on the high seas and regulate their taking in the fishery conservation zone. Furthermore, this assertion of authority is not intended to preempt coastal States' authority to manage anadromous species of fish within their boundaries. As a domestic matter, management of these species will have to be handled on a joint basis with the Fishery Management Councils, created pursuant to this Act, and the individual States. The principal example of anadromous species is salmon, the second most valuable species of fish landed in the United States in 1973. To maintain and foster large annual runs of salmon, the Federal Government and the States have expended millions of dollars in building hatcheries, fish ladders around dams, research facilities, and other facilities and programs designed to enhance salmon populations spawned in the rivers and streams of the Nation. The United States is the "host state," or the point of origin, for a large quantity of the salmon found in the waters of the north Pacific Ocean where virtually all the world's catch of salmon is made. The United States, as the "host state," undertakes costly measures for conservation of salmon and prevents our citizens from fishing for them except in coastal waters, where the necessary escapement can be insured. Other nations may, under the principle of freedom to fish on the high seas, catch what they like where runs are highly vulnerable and are composed mostly of immature fish, unless they agree to restrict their efforts. The purpose of this Act is to assert jurisdiction over anadromous species on the high seas, beyond 200 nautical miles. This aspect of S. 961 is similar to the U.S. law of the sea negotiating position regarding fisheries.

Subsection (c) reaffirms that the United States shall exercise exclusive fishery management authority over Continental Shelf fishery resources. This authority will extend to the depth of the ocean at which such resources can be exploited. The extent of jurisdiction asserted is the same as that afforded to the United States under the Convention on the Continental Shelf.

Subsection (d) specifically excludes highly migratory species of fish from the exclusive management jurisdiction of the United States. This is in recognition of the wide-ranging migratory behavior of tuna and the need for unification of control pursuant to an international agreement. Adoption of controls by a single nation would be largely ineffective in managing tuna, even if that nation had a 200-mile fishery jurisdictional limit. International management is far more preferable. There are two principal treaties which presently apply to fishing for highly migratory species of fish, including within an extended 200-

mile fishery management zone: (1) The Convention for the Establishment of an Inter-American Tropical Tuna Commission (the "IATTC" Convention), effective March 3, 1950 (1 UST 230; TIAS 2044); and (2) the International Convention for the Conservation of Atlantic Tunas (the "ICCAT" Convention), effective March 21, 1969 (TIAS 6767). The IATTC Convention applies to fishing in the eastern tropical Pacific Ocean for yellowfin and skipjack tuna and tuna baitfishes. Member nations are Costa Rica, United States, Mexico, Panama, Canada, Japan, and France. The ICCAT Convention covers all waters of the Atlantic Ocean, including the adjacent seas, and regulates fishing for tuna. Japan, Canada, United States, Brazil, France, Portugal, Spain, Morocco, Ghana, the Republic of South Africa, Korea, Senegal, and the Ivory Coast are signatory to this Convention. Exclusion of highly migratory species from the jurisdiction of the United States preserves these treaties. This is also reflective of the U.S. position on ocean fisheries jurisdiction being advanced in the U.N. Law of the Sea Conference.

Section 102. (Foreign Fishing)

Section 102 provides, and outlines the extent of, authority to allow foreign fishing within the fishery conservation zone, for anadromous species of fish, and for Continental Shelf fishery resources. This authority is given jointly to the Secretary of Commerce and to the Secretary of State. The Secretary of the Treasury, due to his responsibilities under the customs laws, must be consulted in the exercise of this authority. Also, such authority is to be exercised in accordance with the provisions of section 102 and is subject, where appropriate, to title I of the Act, the regulations listed thereunder, and sections 301 and 302 relating to prohibited acts.

Subsection (b) specifies that the allowable level of total foreign fishing, if any is allowed for any stock of fish, shall be set upon the basis of the portion of the allowable catch of any fishery or stock of fish which cannot, or will not, be harvested by vessels of the United States. This section establishes the concepts of (1) preferential rights for vessels of the United States to capture fish over which the United States has exclusive fishery management authority, and (2) full utilization of available fishery resources. To the extent that the U.S. fishermen will not (because they lack the capacity or the desire) capture all the allowable catch of many particular stock of fish, foreign fishing is to be allowed. The overall amount of fishing to be allowed under the Act, including foreign fishing and fishing by vessels of the United States, cannot exceed the optimum yield of any stock or fishery. This subsection is substantially in accordance with the provisions of the single negotiating text developed in the Geneva session of the Third U.N. Law of the Sea Conference and with the U.S. position in regard thereto. Should it become necessary to allocate foreign fishing between and among various foreign nations the concept of traditional fishing activity would be used to establish priority. Traditional foreign fishing means long standing, active, and continuous fishing for a particular stock of fish by citizens of a particular foreign nation. Traditional or historic fishing rights were recognized in the act of October 16, 1966 (80 Stat. 908), which created the existing 9-mile contiguous fishery zone. Whether any nation (whose

citizens presently fish within the fishery conservation zone, or fish for anadromous species of fish or Continental Shelf fishery resources) possesses traditional fishing rights must be determined on a case-by-case basis. Nations which only recently began to fish 1 or 2 years ago clearly lack such rights. However, nations whose fishermen have continually fished on a particular stock for 10 or 15 years in compliance with any applicable fishery treaties of the domestic law would have a strong case for traditional fishing preferences. The Secretary and Secretary of State would allocate any remainder to foreign nations on an equitable basis.

Subsection (c) states that foreign fishing cannot be authorized for any foreign nation unless such nation satisfies the Secretary of Commerce and the Secretary of State that it extends substantially the same fishing privileges to vessels of the United States with respect to fishing within its fishery conservation zone (or its equivalent) or for such nation's anadromous species or Continental Shelf fishery resources, if any. This provision simply creates the principle of equal treatment. Clearly, however, some nations may not have equivalent fishery resources to require equal treatment and therefore no requirement of reciprocity would be required. For example, if the fishermen of Switzerland wish to have access to the fishery conservation zone of the United States, obviously no showing of reciprocity is needed.

Subsection (d) authorizes and directs the Secretary of Commerce and the Secretary of State to establish appropriate conditions for foreign fishing which must be complied with by any foreign-flag fishing or fishing-support vessel authorized to fish under the Act. These conditions are to be consistent with the national standards, the fishery management plans, and the management regulations under title II of the Act. It is anticipated that such conditions will become part of any agreement between the United States and any such nation, and would be enforced by the United States as well as by the flag nation.

In determining the allowable level of total foreign fishing with respect to any particular fishery or stock of fish, the Secretary of Commerce and the Secretary of State are to utilize the best available scientific information, including, but not limited to, catch and effort statistics and relevant data compiled and made available by any foreign nation. Subsection (e) requires the Secretary of Commerce to verify the authenticity of foreign catch statistics and any other relevant data furnished for this purpose. The Secretary is also authorized to require that observers be placed aboard foreign-flag fishing and fishing-support vessels authorized to fish pursuant to the Act, to the extent necessary and appropriate. The purpose of such observers is to insure that accurate catch statistics are reported and that the applicable allowable catch level is not exceeded.

The Secretary is also authorized and directed to establish a schedule of reasonable fees which shall be paid to the Secretary by any foreign-flag fishing or fishing-support vessel authorized to fish pursuant to the act. In determining the level of such fees, the Secretary may take into account the overall cost of management, research, administration, enforcement, and the value of the fishing privilege, and other relevant factors. The costs of the management system for U.S. fisheries will be borne in part by tax revenues. Consequently, domestic fishermen may

contribute to the effort in the form of both tax payments and license fees. Accordingly, the fees charged any foreign fishing vessel would likely be higher than those for a domestic vessel. Therefore, the bill provides that fees charged by the Secretary may vary for different categories of fishermen to the extent deemed reasonable and appropriate. In addition, all pertinent information relating to foreign fishing, including that which is authorized to be collected by the Secretary, shall be made available publicly and shall be published in summary form in the Federal Register. Further, no vessel from a foreign nation authorized to fish pursuant to the Act shall engage in such fishing unless and until the owner or operator thereof establishes and maintains a place of business in the United States and names an agent in a State who is authorized to receive legal process. This requirement is intended to simplify information gathering and administration of the Act.

Subsection (f) provides that, except as provided pursuant to this act, it shall be unlawful for any vessel, or for any master or other person in charge of any vessel, except a vessel of the United States, to engage in fishing in the internal waters, the territorial sea, or the fishery conservation zone of the United States, or to engage in fishing for anadromous species or Continental Shelf fishery resources. It should be noted that this Act would allow no foreign fishing within the internal waters or the territorial sea of the United States.

Section 103. (International Fishery Agreements)

Section 103(a) directs and authorizes the Secretary of State, in cooperation with the Secretary, to initiate and conduct negotiations with any foreign nations which, prior to the date of enactment of this Act, has been engaged in, or whose citizens have been engaged in, or wish to engage in, fishing within the fishery conservation zone of the United States, or for anadromous species or Continental Shelf fishery resources. In most cases, this will involve nations with which the United States already has executive agreements concerning fishing, or nations which are a party to multilateral fishery agreements covering fishing off the coasts of the United States. However, there may be instances in which nations, which have not signed agreements with the United States or which are not signatory to applicable international treaties, may seek fishing agreements with the United States. It should be made clear that S. 961 does not automatically and completely negate either existing treaty rights or traditional fishing activity. Clearly, the United States has a duty to negotiate with those countries whose citizens fish in areas which would come under an extended fishery conservation zone. The purpose of this section is to direct the Secretary of State to begin negotiations in order to either phaseout or phasedown foreign fishing activities to the levels specified in section 102. The Committee recognizes the obligation to negotiate with other nations to achieve the goals of this Act. This provision is for that purpose.

In addition, section 103 would authorize and direct the Secretary of State, upon request of and in cooperation with the Secretary of Commerce, to initiate and conduct negotiations with any foreign nation in whose fishery conservation zone (or its equivalent), vessels of the United States are engaged, or wish to be engaged, in fishing, or with respect to anadromous species or Continental Shelf fishery re-

sources as to which such nation asserts management authority and for which vessels of the United States fish, or wish to fish.

The purpose of all such negotiations would be to conclude international fishery agreements to effectuate the purpose, policy, and provisions of this Act. Such agreements may include, but need not be limited to, agreements to provide for the management and conservation of (1) coastal species which are found both in the fishery conservation zone of the United States and an adjacent foreign nation's equivalent of such zone; (2) anadromous species which are found, during the course of their migration, in ocean areas subject to the fishery management authority of more than one nation, or which intermingle on the high seas with anadromous species originating in the rivers and estuaries of other nations; (3) highly migratory species which may be covered by international fishery agreements; and (4) coastal species or Continental Shelf fishery resources which are found in areas subject to the fishery management authority of any foreign nation, through measures which allow vessels of the United States to harvest an appropriate portion of such species in accordance with the traditional fishing activity of vessels of the United States.

Subsection (b) further directs the Secretary of State to immediately review, in cooperation with the Secretary of Commerce, each treaty, convention, or other international agreement to determine whether the provisions of such agreements are consistent with the purposes, policy, and provisions of this act. Presently, the United States is a party to 23 bilateral or multilateral treaties and executive agreements. Many are short-lived executive agreements, negotiated for only 1 or 2 years. It is intended that most such agreements be renegotiated to make them compatible with this Act. Obviously, however, those agreements which have proved successful in the past and which are still satisfactory to U.S. fishing interests, should be retained, if possible. The Committee intends that negotiations should begin immediately upon enactment of this Act, and the Secretary of State should seek to amend or terminate any agreement which requires change or termination by not later than September 30, 1976. Time is of the essence and quick action is required.

Subsection (c) was included to indicate that the Secretary of State should begin to seek agreements with neighboring countries on the boundaries of the fishery conservation zone of the United States in relation to any such nation. It is possible that negotiations may take some time and it is hoped that the Secretary can achieve interim agreements where necessary so that management programs are not impeded. The immediate and primary concern will be the boundaries with Mexico, Canada, the Soviet Union, and Caribbean nations.

Because of the possibility that certain nations may cite this Act as precedent for a total exclusion of vessels of the United States from the fishery conservation zone over which they claim jurisdiction, subsection (d) declares that it is the sense of Congress that the U.S. Government shall not recognize the limits of a fishery conservation zone (or its equivalent) beyond 12 miles from any nation's coastline, if such nation (1) fails to recognize the traditional fishing activity of vessels of the United States, if any, within the zone; (2) fails to recognize

traditional fishing activity of vessels of the United States with respect to anadromous species or Continental Shelf fishery resources as to which such nations asserts management authority; or (3) fails to recognize and accept that highly migratory species are to be managed by applicable international fishery agreements, whether or not such nations is a party to such agreements. This provision seeks to protect the interest of our long-distance fishing fleets by withholding recognition of a foreign nation's claimed fishery jurisdiction if it is not reasonable in scope.

The last provision of this section, sets a termination date for the other provisions of the title. The sections relating to jurisdiction would expire, and cease to be of any legal effect, on the date that a Law of the Sea treaty (or other comprehensive treaty, convention, or agreement with respect to fishery jurisdiction, which the United States has signed or is a party to) comes into force or is provisionally applied by the United States. The Committee expects that this title will be interim in effect and will be amended once a Law of the Sea treaty is agreed to. If the United States signs whatever product is produced out of the Third United Nations Law of the Sea Conference and when the ratification process is complete, this title will be superseded. If the agreement can be provisionally applied, i.e., come into force prior to formal ratification, this title will also cease to have any legal effect.

TITLE II—NATIONAL FISHERY MANAGEMENT PROGRAM

Section 201. (National Standards)

Title II creates the institutional mechanism, and procedures, for the adoption of measures to manage and conserve the fisheries subject to the provisions of this Act. It is often felt that when foreign fishing fleets operating within 200 miles of our shores are controlled, problems which have plagued our fishing industry in the past will be eliminated. However, the Committee recognizes that by itself the establishment of a 200-mile limit will not eliminate all the problems which have beset our fishing industry. A viable management scheme for the nation's fishery resources is a necessary concomitant of an extended fishery zone. It is absolutely vital that a national management program, properly tailored to take account of the variability of fish resources, the individuality of the fishermen, the needs of the consumer, and the obligations to the general public, be established. It must also be designed to provide the best product to the consumer at the lowest price while insuring a fair return to fishermen. The Committee fully recognizes that creation of this new institutional mechanism, and its implementation, will be no small undertaking. S. 961 has been redrafted to begin that undertaking.

At present, the Federal Government, as noted earlier, does not regulate domestic fishing practices beyond the 3-mile territorial sea even though there is paramount Federal jurisdiction in the area. In 1966, Congress adopted legislation which extended national fishery management jurisdiction 9 miles beyond the 3-mile territorial sea, and generally excluded foreign fishing from this zone. Fishing within the 3-mile limit is regulated by the States. States also manage their resi-

dents wherever they go through State licenses and landing laws. However, this State-to-State separation of power is not reflective of the migratory habits of fish stocks, but is due to historic and political factors. As a result, inconsistent regulations have often developed. For example, the State of Oregon maintains a salmon hatchery program. Salmon reared in the Oregon program descend Oregon rivers and later may be found in California waters. These same salmon may then be caught legally under the California fishing regulations, but earlier in the season and at a smaller size than it would be legal to catch these fish under Oregon's fishing code. Consequently, management of fishery resources from the national or regional perspective is important to sound conservation practices.

Title I establishes a fishery management institutional arrangement of three parts. Section 202 establishes seven Regional Fishery Management Councils which are charged with the responsibility of preparing management plans and recommending management regulations to the Secretary for fisheries in the various regions of the country. The regional Councils are, in concept, intended to be similar to a legislative branch of government. The Councils are afforded a reasonable measure of independence and authority and are designed to maintain a close relation with those at the most local level interested in and affected by fisheries management. The Secretary of Commerce is given authority under the bill to act as the "executive," with ultimate authority to make decisions about management regulations for the entire nation. However, the Secretary's responsibility is by no means intended to be plenary. His duties will be to insure that the Councils are properly constituted; that they operate according to the procedures set forth in the Act; that the management regulations which the Councils recommend are compatible with the national management conservation standards; that such regulations do not conflict with any provision of this Act or other applicable law; and generally that the Councils abide by this Act. Finally, section 204 establishes an appellate body, theoretically comparable to the judicial branch, the Fishery Management Review Board. The purpose of this Board is to provide an independent review of disputes (1) which may arise between the individual Councils and the Secretary and (2) relating to the application of management regulations, issuance or denial of licenses, and so on. The Board would be made up of five individuals of "blue-ribbon" quality. The concept of an administrative review board of this nature is not new (i.e. the National Labor Relations Board) and will hopefully provide an independent review process with the ease of access and speed of decision that will give confidence to the decision-making process.

Section 201 sets forth the national standards for fishery management and conservation. These apply to management and conservation measures affecting fishing in the fishery conservation zone, for anadromous species and for Continental Shelf fishery resources. The first standard states that management and conservation measures shall prevent overfishing and insure on a continuing basis the optimum yield for each fishery. Undoubtedly this is the most basic objective of fishery management, but still deserves clear recognition. There should be no uncertainty that the basic goal of management is to protect the productivity of fish stocks.

The second standard states that management and conservation measures shall be based upon the best scientific information available. This must also be recognized as one of the most important standards.

As just stated, a basic management objective is to harvest a stock of fish at the level of optimum utilization. If little is known about the size of the stock or environmental effects on other stocks or similar relationships, however, even the best management scheme will fail. Therefore another primary goal must be to achieve the best available scientific information about the stocks. The term "scientific information" is meant to include not only biological and ecological data but also economic and sociological information as well.

The third standard states that, to the extent possible, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination. As the previous example of the Oregon salmon indicates, unity of management, or at least close cooperation, is vital to prevent jurisdictional differences from adversely affecting conservation practices. The committee recognizes the need to have close cooperation between the Federal and State government because of the separation of jurisdiction inherent in this Act. This is one of the primary reasons why both State and Federal representatives are included in the membership on the Regional Fishery Management Councils.

Standard four states that management and conservation measures shall not discriminate between residents of different States. It states further that, if it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be fair and equitable to all fishermen, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. Resource management is essentially a series of allocations—allocations among present users, allocations between present and future users, and allocations between public and private interests. There are simply not enough fish to go around and the line must be drawn somewhere. This is one reason why this Act provides for authority to limit access to a fishery which has too many fishermen participating in it. It is a fact of life that not everyone who wishes will be allowed to fish for a given stock of fish. Therefore when allocation becomes necessary, it must be done judiciously and carefully to prevent discrimination or bias. Since there will be pressures on State representatives to protect the residents of their home State, nothing will destroy the effectiveness of this new management program than if one State, or group of States, attempts to favor their own residents to the detriment of others. If, for example, the most efficient area to catch fish during their migration is near the coast of Rhode Island, New Jersey fishermen should be allowed an equitable portion of the catch if they also fish the same stock.

Standard five states that management and conservation measures shall, where appropriate, promote efficiency in the utilization of fishery resources. Historically, fish stocks have been treated as common property natural resources. As no one has property or ownership rights in them, fishery resources are open to anyone who desires to invest in the requisite vessels and gear, and fish. Fishery resources are,

in theory, owned by the American society as a whole, and with a few exceptions, there have been no limits to the number of fishermen who can participate in a fishery. However, this common property characteristic has had rather severe consequences for the use and management of these resources, particularly as stocks have declined. Economic waste has occurred due to overcapitalization of harvesting fleets. Therefore, the committee believes that it should be the goal of the national management program to improve efficiency so that the cost of the product can be reduced and the American fishermen can once again provide a greater share of the fish consumed in the United States. However, there are certain instances in which maximum efficiency would be inappropriate. For instance, recreational fishing need not be made efficient, or much of the sport would be removed.

Management standard six provides that management and conservation measures shall allow for unpredicted variations in fishery resources, and their environment, and for contingencies or possible delays in application. There can be great uncertainty with regard to the location, size, and even the very existence of fish stocks. There are often great peaks and valleys in annual catch statistics for many fisheries. One year the California sardine industry was booming. Less than two years later it was no longer economically viable. Therefore there must be a margin of error in the management system to provide a buffer in favor of the resource. Administrative flexibility to meet unanticipated changes in yield functions due to natural systems must be available. Sudden spawning failure, environmental change, or a combination of these and other factors, may render even the best possible management plans obsolete. Constant acquisition and analysis of data concerning catch and other indicators will help reduce uncertainty. There must be administrative flexibility to adjust to and correct errors; there must be a margin of safety.

Standard seven states an obvious, but often ignored, basic goal: management and conservation measures shall, where appropriate, minimize research, administrative, and enforcement costs and shall avoid unnecessary duplication.

Subsection (b) provides that the Secretary shall publish guidelines, based on the national standards, for the Councils to follow in developing fishery management plans and recommended regulations for the management and conservation of fisheries subject to their authority. This provision is included because it is the Secretary who ultimately must make the decision whether recommended regulations are consistent with the national standards. An after-the-fact determination, however, is not preferred and the Secretary should spell out, as early as possible, guidelines for measures which are consistent with the national standards.

Section 202. (Regional Fishery Management Councils)

Under subsection (a) there is to be established, within one hundred and twenty days after the date of enactment of the Act, seven regional fishery management councils: the North Atlantic Council, the South Atlantic Council, the Gulf of Mexico Council, the Pacific Council, the Caribbean Council, the North Pacific Council, and the Outer Pacific Council. Each council would be concerned with the fisheries seaward of

the States named to be part of the council, with the exception of the Pacific Council and the North Pacific Council. The Pacific Council would be concerned with the fisheries in the Pacific Ocean, seaward of California, Oregon and Washington. However, Idaho, which has a sizeable salmon rearing program in the Columbia River, and Alaska, whose fishermen fish in northern part of the Pacific area, are also included on the council. The North Pacific Fishery Council would be concerned with the fisheries in the northern Pacific Ocean off the State of Alaska. For the most part, fishermen in this area reside in Alaska, however, a fairly large number of residents from the State of Washington also fish in this area.

The committee has provided for two fishery management councils on the Atlantic Coast while it was suggested by some that there be three. The committee believes, however, that, for biological reasons, two councils make more sense than three. Furthermore, having but one council in the North Atlantic, rather than two, will reduce the need for negotiations between two institutional bodies for the management of a single fishery.

Subsection (b) specifies that each regional fishery management council reflect the expertise and the interest of the several identified States in the ocean area over which each council is granted authority. Each identified State is entitled to have three members on each applicable council, except that in the case of the Caribbean Council, the Virgin Islands and the Commonwealth of Puerto Rico are entitled to four members each, and in the case of the North Pacific Council Alaska is entitled to five members.

Under subsection (c), the Governor of each State may, if he chooses, submit to the President of the United States a list containing the names of those individuals he feels are qualified to be appointed as members of a council as representatives from his State. The President, with the advice and consent of the Senate, would appoint members to represent each State, using the suggestions of the Governors. Confirmation by the Senate is required. At least one of those nominated and confirmed must be a State official with expertise in fishery management. It had been suggested to the committee that persons he named to the councils as representative of specific groups interested in fisheries management. For example, it was suggested that one who was knowledgeable in recreational fishing should be made a member of each council. However, the committee felt that designating one particular interest group would require that other particular groups be represented as well. This would result in far larger councils than would be administratively workable. Therefore, the committee defined that a "qualified individual" is one who is knowledgeable and capable of making sound judgments in the *public* interest with respect to the management and conservation of fishery resources, and vested the discretionary judgment of achieving balanced membership with the Governor and the President. The President would also appoint, upon recommendation of the Secretary, a Federal Government employee to serve on each Council as the Representative of the Secretary. This member of the council is considered to be quite important to the operation of the management program. Through the Federal Government representative, a continual dialoge between the councils and the Secre-

tary should be carried on. In this manner, serious disputes can be avoided.

The terms of office of the members (selected as representatives of State) first taking office would expire as designated by the President at the time of nomination—one at the end of the second year, one at the end of the fourth year, and one at the end of the sixth year. Successors to these members would be appointed in the same manner as the original members, except those who have faithfully attended and effectively contributed, in the public interest, to the functioning of such council would be eligible for reappointment. The term of office of successors to such members would expire 6 years from the expiration date of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office would be appointed for the remainder of such term. Council members, who are not otherwise employed in any capacity by the Federal or any State or local government, would receive compensation at the daily rate of GS-18 of the general schedule, when engaged in the actual performance of their duties, and all members would be reimbursed for their actual expenses (travel, etc.).

Subsection (c) sets forth the basic powers and functions of each council. Each is authorized to (1) select a chairman; (2) appoint, and assign duties to, an executive director and such other full and part-time employees as are necessary to conduct business, and to appoint persons to individual fishery committees and the scientific and statistical committee; (3) identify fisheries in need of management; (4) develop, and submit to the Secretary, an overall fishery management plan, including separate management programs for each fishery within its respective geographic area of authority in need of management; (5) develop, and submit to the Secretary, recommended regulations for the management and conservation of fish within its geographic area of authority; (6) monitor fishing activity and review the impact of management regulations and recommend to the Secretary any appropriate amendments and changes therein; (7) conduct hearings, at appropriate times and in appropriate locations, so as to allow all interested persons an opportunity to be heard on the overall fishery management plan, any separate management program, recommended regulation, and any amendments to regulations; (8) otherwise carry out such other functions as are necessary and appropriate for the effective management and conservation of fisheries resources within its geographic area of responsibility; and (9) report to the Secretary on its activities, plans, programs, findings, and such other matters as are requested. The committee expects that each council would have the appropriate degree of independence necessary to carry out these functions. However, the councils must abide by the requirements of the Act and the requirements of any other Federal law relating to, or affecting, its activities. As indicated earlier, the councils will perform "legislative" duties primarily and will operate by majority rule.

Subsection (d) directs the Secretary to provide each council with such administrative support as is necessary for effective functioning. This would include building space, administrative supplies, as well as auditing and payment of staff salaries and the other costs of the councils.

It is also expected that support would be provided by the existing regional fisheries commissions.

Because membership on the councils will be largely made up of persons with other job responsibilities and would meet only intermittently, the committee expects that additional expertise must be available to give each council the independent expertise required to effectively carry out its functions. Subsection (e) authorizes each council to establish two types of committees. First, a scientific and statistical committee would be named to assist each council in the development collection and evaluation of each statistical, biological, economic, social and other scientific information as is relevant to management plans or recommended regulations. This committee would be composed of not more than seven members, six of whom would be fisheries scientists and experts, and the seventh would be the director of the appropriate regional research center of the National Marine Fisheries Service would serve as chairman. Active use of a scientific and statistical committee, the committee believes, is a very important part of the overall management program. Independent decisions by fisheries experts is indispensable to wise management decisions. The director of the appropriate regional center of the National Marine Fisheries Service is designated to serve on the committee as chairman because the National Marine Fisheries Service has the resources and personnel to develop data and do research on fisheries. It is expected that the Service will continue that function and provide scientific information to the regional councils for their use. Second, subsection (e) authorizes the establishment of "individual fisheries committees" to assist the councils in the preparation of management programs, recommended regulations, and/or changes or amendments to existing plans and regulations, with respect to individual fishery. Individual fishery committees would be composed of persons selected to represent those actually engaged in the fishery, and others knowledgeable and interested in the conservation of the fishery. Each council will need to rely on these committees to assist it. This is the mechanism by which the so-called "user groups" would provide input. It is intended that the councils fairly balance membership on each committee so that all interested groups are represented in proper proportion. Members of both of these committees would be reimbursed for travel expenses including per diem in lieu of subsistances as provided in section 5703 of title 5, United States Code, for persons in government service intermittently.

Each council would have the responsibility of developing management plans and recommended regulations with respect to fishing in the fishery conservation zone, and fishing for anadromous species and Continental Shelf fishery resources beyond the zone, but have no power to regulate fisheries principally located in waters within the boundaries of a single State. However, the committee fully expects that, in the case of fisheries which overlap a council's area of authority and State boundaries, the councils will collaborate with the States and develop non-conflicting management programs. Subsection (f) also provides that, if a fishery extends beyond the geographic area of authority of a single council, the appropriate councils would coordinate or combine their efforts as necessary.

Section 203. (Management Regulations)

This section outlines the procedures for adopting, and the content of, management regulations to be promulgated under the Act. Subsection (a) provides that as soon as practicable, each council, or the Secretary, would identify those fisheries in need of conservation. Each council would then develop (1) a fishery management plan for each fishery in the order needed, and (2) recommended management regulations as required for the implementation and maintenance of each plan. A fishery management plan would contain goals, management measures such as quotas, descriptions, and the like. It would also have to remain fairly flexible given the variability of fish stocks. Furthermore, in large measure, the plan will be made up of the management regulations themselves. The councils would submit the completed plan and the recommended regulations to the Secretary as soon as practicable. The plan must include (a) the description of the fishery, including but not necessarily limited to, the number of vessels involved; the type of gear used; the species of fish involved and their location; the costs likely to be incurred in management; the potential revenue from the fishery; the recreational interest in the fishery; and the nature and extent of foreign fishing and Indian treaty rights, if any; (b) a summary of the best scientific information available with respect to the present and probable future condition of, and the maximum sustainable yield, from the fishery; (c) an assessment of the capacity of vessels of the United States, and the desire of their owners to harvest the optimum yield from a fishery, and an assessment of the surplus in the fishery which can be made available for foreign fishing without risk of overfishing; and (d) any other relevant and appropriate information, data, and evaluations. The above list is intended to be illustrative and a minimum and not exclusive.

Subsection (b) outlines the type of management regulations which might be recommended by the councils. Listed in the bill are all of the management tools presently available for the management of fishery resources, and are described below.

1. Closed seasons involve the prohibition of fishing effort during a given time period. These are usually set during periods when fish are extremely vulnerable, in spawning condition, or at low marketable quality. Closed areas involve the closing of a specific geographic area to fishing. Fishing areas are closed when the harvest of fish would endanger survival of the stock. Spawning and nursery areas are frequently closed to fishing during critical periods of a species' life cycle. Also certain areas may be closed to certain types of gear so that more vulnerable species can be allowed to regenerate.

2. Under the Act, the councils, together with the Secretary, would be authorized to, directly or indirectly, limit access to a fishery. Limited access is a management technique that is directed at economic as well as biological objectives. This technique is used to reduce the congestion and economic waste which often occurs from the "open access" condition of common property fisheries. There are three different techniques for limiting access. One is the use of licensing schemes which limits the number of units in a fishery. This might be a limit on the number of vessels, fishermen, nets, pots or other kinds of inputs. The second

technique is to control the amount of capital and labor through taxes or license fees in an amount sufficiently high to dissuade superfluous fishermen from entering the fishery. The third technique is to divide the total allowable catch into shares or quotas which are then distributed among the fisherman. Limited access is a rather novel fishery management tool and is being tried on a large scale only in Alaska, British Columbia, and the salmon fishery in the State of Washington. Experience with limited access is still sparse and refinement of the technique is continued. The committee intends that limited access should be used carefully, and only when other tools fail to achieve management objectives. In structuring such a system, the councils and the Secretary should, among other considerations, recognize: present participation in the fishery; historical fishing practices; dependence on the fishery; the value of existing investment in vessels and gear; the direct of fishing privileges; the capability of existing vessels to direct their efforts to other fisheries; any State limited access systems; the history of compliance with applicable fishing regulations; the optimum yield of the fishery; and the cultural and social framework in which the fishery is conducted. The committee also wishes to point out that this provision should not be construed, in any way, to affect or change the treaty rights of Indians such as have been recognized in the decision of the United States Court of Appeals for the 9th circuit, in the case *The United States v. the State of Washington*, or any other applicable decision or treaty.

3. The councils and the Secretary, would also have authority to establish limitations on the catch of fish in any fishery based on area species, size, number, weight, sex, incidental catch, total biomass, quotas, or other factors which are necessary in the conservation of such fish. Determination of size limits are often based on several different philosophies. In some cases the size limit is based on an attempt to increase annual yields by permitting individual fish to grow to a larger size. In other instances, the taking of fish below a certain size is prohibited in order to allow growth to a more useable size, or to an age or size where reproduction is possible. And, in a few cases, maximum limits are imposed in order to preserve broad stock.

4. Vessel limitations, such as restriction on size, tonnage, or automatic power, are generally adopted as means for indirectly decreasing pressures on a stock by imposing technological inefficiency. Such controls tend to be effective only temporarily. It is this type of regulation that in the past has often proved to be restrictive, complicated, and wasteful. This tool will have its best impact when used in conjunction with others (such as limited entry no-fishing zones, etc.) Nonetheless, while this tool is made available, the committee still fully intends that efficiency in resource utilization could be achieved wherever possible.

5. Issuing licenses or permits might be used in conjunction with all the other tools, such as limiting access, restricting vessel and gear size, or whatever. To the extent possible, the Secretary should streamline the license system, perhaps by working in conjunction with State licenses issued for similar fisheries.

6. Obtaining catch and other appropriate statistics is vital to successful fishery management program. As part of the overall manage-

ment effort, individual fishermen, as well as processors, should be required to report catch or other data.

7. In addition to other powers, the councils and the Secretary may use other measures which might be necessary and appropriate to carry out the purposes of this Act.

Subsection (c) outlines the authority of the Secretary to review recommended regulations. Once a council completes its plans and recommended regulations and submits them to the Secretary, the Secretary would review the regulations and determine whether they are consistent (1) with the national standards, and (2) with the provisions and requirements of this Act and any other applicable law. Recommended regulations which are consistent would be adopted by the Secretary, and he would publish a notice of proposed rulemaking with regard to them. If the Secretary determines that they are inconsistent, he would notify the applicable council of the inconsistency and indicate the changes necessary to make the regulations consistent. The council then may make the changes, but if it fails to do so within 60 days after it received notice from the Secretary, the Secretary can then go forward and make the necessary changes himself and issue the notice of proposed rulemaking. During the review process, the Secretary is required to consult with the Secretary of the Department in which the Coast Guard is operating if any recommended management regulation would involve methods and procedures for enforcement at sea. Furthermore, if any recommended regulations would apply to foreign fishing, the Secretary must consult with the Secretary of State. Clearly, writing regulations which would apply to foreign fishing is more properly a function of the Federal government, rather than the councils. It is expected, therefore, that the Secretary will have more discretion with regard to these regulations to insure that they are compatible with U.S. international obligations. However, there are some management regulations which the councils could properly recommend: for example, closed areas to protect certain stocks, quotas, and mesh sizes for nets, among others.

Subsection (d) states that the Secretary shall publish, in the Federal Register, any management regulations which he proposes to promulgate pursuant to the Act. The regulations would, among other things, request comment on the proposed regulations, designate the fisheries to which they apply, and summarize the recommendations of the applicable council or councils, including, where appropriate, an explanation of how the proposed regulations differ from those recommended by the councils and the reasons therefor.

Subsection (3) authorizes the Secretary to promulgate final regulations, in accordance with the provisions of this title and section 553 of title 5, United States Code, without regard to subsection (a) thereof. These regulations would cover (1) fishing by vessels of the United States and foreign fishing within the fishery conservation zone, (2) fishing by vessels of the United States for coastal species beyond that zone, and (3) fishing by vessels of the United States and foreign fishing for anadromous species and Continental Shelf fishery resources with the zone and beyond. In addition, the Secretary is authorized to issue regulations pertaining to, but not limited to, the operation of the councils, the setting of fees, procedures for obtaining data and statistics

relating to fishing, and other matters relating to the purposes of the Act. The regulations must provide for full consultation and cooperation with all other interested Federal agencies and departments, with any coastal State, and with any foreign nation (through the Secretary of State), and for consideration of the views of any interested member of the general public. The Secretary is further authorized, consistent with the purposes and provisions of the Act, to amend or rescind any such regulations.

Subsection (f) provides the Secretary with authority to take emergency action. If the Secretary determines that an emergency situation exists requiring immediate action in the national interest to protect any fishery resources, he would prepare and promulgate emergency management regulations as soon as practicable. Such regulations must be issued in accordance with the provisions of section 553 of title 5, United States Code, without regard to subsection (a) thereof. An emergency situation might arise in the case of a sudden collapse of a fish run during the season, or a similar occurrence. Emergency regulations should not remain in effect for an extended period of time. The Secretary should also discuss the situation with the appropriate council to determine whether more permanent regulations, a removal of the emergency regulations, or other action, is needed.

To allow public participation, subsection (g) provides that any coastal State, or any interested member of the general public, may nominate a fishery as a fishery in need of regulation, by submitting a written statement to the Secretary identifying such fishery and describing the reasons why it should be managed. The Secretary shall promptly forward each such nomination to the appropriate council for action.

Subsection (h) directs the Secretary to review, from time to time, the actions of the councils to determine whether the councils are acting in timely fashion. If the Secretary determines that a council has failed to recommend management regulations for any fishery within a reasonable time, he would prepare management regulations and submit them to that council. The council would have an opportunity to make changes in those regulations consistent with the national standards. But if it does not make the changes within 45 days after it receives the submission from the Secretary, the Secretary's regulations would stand, and he would issue a notice of proposed rulemaking on them.

The Secretary, under subsection (i), is directed to initiate and maintain a program of fisheries research designed to acquire knowledge and information, including statistics, on fishery management and conservation, including, but not limited to, biological research concerning interdependence of species, the impact of pollution, the impact of wetland and estuarine degradation, and other factors bearing upon the abundance and availability of fish. This research program would be supportive of the national fishery management program.

Section 204. (Fishery Management Review Board)

Section 204 establishes an independent instrumentality to be known as the Fishery Management Review Board. The Board would have exclusive and original jurisdiction to hear appeals from actions of the Secretary relating to fishery management. The purpose of the Board is to provide an independent review procedure for the settlement of

disputes arising from the administration of the Act. The Board is established to be the "fact-finder" in the appeals defined in subsection (c). Congress has fairly broad power under Act III, section I, of the Constitution to define judicial authority. In this case, the committee feels it appropriate that an administrative review board consider certain appeals relating to this Act in the first instance, and that judicial review of the Board's decision be made by the U.S. Courts of Appeals.

The Board would be composed of five members appointed by the President, by and with the advice and consent of the Senate. Of the members, at least three would be individuals appointed by the President from a list of qualified individuals submitted by the National Governor's Conference consisting of not less than three such individuals for each vacancy. Members of the Board would not engage in any other business, vocation, or profession during their term of office. A "qualified" individual is defined as someone who is knowledgeable and capable of making sound judgments with respect to appeals before the Board.

The members of the Board would be appointed for a term of three years, except that (1) the terms of office of the member first taking office would expire as designated by the President at the time of nomination; and (2) any individual appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed would be appointed for the remainder of the term and in the same manner in which his predecessor was appointed. Successors to the members of the Board first taking office are to be appointed in the same manner as the original members. Each member of the Board is eligible for reappointment. The members of the Board would select one of their number to serve as chairman. The Board is authorized to appoint an executive secretary and such administrative law judges and other employees as are necessary for the proper performance of its duties.

Subsection (c) describes the scope of appeals reviewable by the Board. Any person who is adversely affected, aggrieved by, or suffering legal wrong because of (1) any final management regulation promulgated by the Secretary pursuant to this title, or (2) a decision by the Secretary to issue, transfer, revoke, suspend, modify, or renew a license or permit, may obtain review of such action by the Board if he files a request for review with the Board not later than 60 days after the date of publication of such final regulation or decision. In addition, any council, whose recommended management regulations were determined by the Secretary to be in consistent with the national standards, may obtain review of the Secretary's action by the Board if it files a request therefor with the Board not later than 60 days after the date of publication of any final management regulation involved. In any appeal, the Secretary or any affected council, if not a party, may intervene as a matter of right.

The review proceedings of the Board would be in accordance with the provisions of section 554 of title 5, United States Code, and the Board should publish its rules of procedures in the Federal Register. To the extent possible, such proceedings would be held in the locality closest to the fishery involved. Should the Board find that justice so requires, it may issue an order postponing the effective date of an

action of the Secretary, or preserving the status or rights of any person, pending the outcome of such review proceedings.

Subsection (d) specifies the review standard to be applied by the Board. In any review requested by a council relating to any management regulation, the Board would uphold the action of the Secretary unless it finds that his action: (1) was not consistent with the national fishery standards, or with the provisions and requirements of this Act or any other applicable law; (2) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (3) was contrary to constitutional right, privilege, power or immunity; (4) was clearly not supported by the facts and record available to the Secretary; or (5) did not observe the procedure required by this Act or other law. If the Board did not uphold the action of the Secretary, it would enter a final decision declaring the action invalid together with the reasons therefor; remanding the matter to the Secretary; and directing the Secretary to take, after consultation with the affected council, appropriate action. In an appeal relating to any other matter, the scope of review would be as set forth in section 706 of title 5, United States Code.

Subsection (e) provides powers to the Board, or any member thereof, to carry out the provisions of section 204, hold hearings, sit and act at appropriate times and places, administer oaths, and require by subpoena or other order the attendance and testimony of witnesses and the production of evidence as the Board or member deems advisable. Subpoenas could be issued under the signature of the Chairman of the Board or any duly designated member of the Board, and could be served by any person designated for that purpose by the Chairman. Witnesses summoned would be paid the same fees and mileage paid witnesses in the courts of the United States. Attendance of witnesses and production of evidence may be required from any place in the United States to any place designated for any hearing.

In the event someone refuses to obey a subpoena or other order, issued by the Board, the district court of the United States for any such district would have jurisdiction and could, upon the request of the Chairman of the Board, issue to that person an order to appear and produce evidence. Failure to obey such an order would be punishable by the Court as a contempt of court.

The Administrator of General Services is directed to furnish the Board with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

Subsection (f) provides that members of the Board would be compensated at the rate provided for level V of the executive schedule (5 U.S.C. 5316), and would also be reimbursed for travel expenses, including per diem in lieu of subsistence.

Subsection (g) states that any person who is adversely affected or aggrieved by, or who suffers legal wrong through, a decision of the Board may, not later than 60 days after the date of any such decision, seek judicial review of the decision in the United States Court of Appeals for the circuit nearest to the fishery involved.

Section 205. (Relationship to State Laws)

This section is included to emphasize the committee's desire that nothing in the Act be construed to extend the jurisdiction of any State over any natural resources beneath or in the waters beyond its seaward boundaries, or to diminish the jurisdiction of any State over any natural resource beneath and in the waters within its boundaries. This bill is intended to cover fish in the fishery conservation zone and to cover fishing for anadromous species of fish and Continental Shelf fishery resources of the United States found beyond the zone.

Section 206. (Interstate Cooperation and Uniform Laws)

The Secretary is directed to encourage cooperative action by the States and councils for the management and conservation of coastal and anadromous species of fish and Continental Shelf fishery resources, and to encourage, insofar as practicable, the enactment of improved and uniform State laws relating to the management and conservation of such fish. Cooperation between the individual States, the Federal government, and the councils is essential to effective management. The committee believes that this area desires continual priority attention by the Secretary.

TITLE III—MISCELLANEOUS PROVISIONS

Section 301. (Prohibited Acts and Practices)

Section 301 (a) defines prohibited acts. It is deemed unlawful for any person to: (1) violate any provision of the Act, or any regulation issued thereunder, regarding fishing within the fishery conservation zone or with respect to anadromous species of Continental Shelf fishery resources; (2) violate any provision of any international fishery agreement to which the United States is a party and which is negotiated or reviewed pursuant to this Act, to the extent the agreement applies to or covers fishing within the fishery conservation zone; (3) ship, transport, purchase, sell or offer for sale, import, export, possess, control, or maintain in his custody any fish taken in violation of paragraphs (1) or (2), if that person knew or had reason to know that the taking was not lawful; (4) refuse to permit a duly authorized representative of the Secretary, or of the Secretary of the department in which the Coast Guard is operating, to board a fishing vessel or fishing-support vessel subject to that person's control, if the purpose of the requested boarding is to inspect the catch, fishing gear, ship's log, or other records or materials aboard the vessel; or (5) fail to cooperate with a duly authorized representative of the Secretary, or of the Secretary of the department in which the Coast Guard is operating, engaged in a reasonable inspection pursuant to paragraph (4), or to resist any lawful arrest.

For the purposes of this section, it shall be a rebuttable presumption that all fish found on board a vessel seized in connection with a prohibited act were taken or retained in violation of this Act. The origin of this provision is the so-called Bartlett Act (13 U.S.C. 1082).

Subsection (b) defines the criminal penalties: any person who willfully commits a prohibited act could upon conviction, be fined not more than \$100,000 or imprisoned for not more than 1 year, or both.

Civil forfeiture of vessels of gear has proved to be a valuable deterrent to fishing violations. Subsection (c) provides that any district court of the United States would have jurisdiction, upon application by the Secretary or the Attorney General, to order forfeited to the United States any fish or fishing gear, used, intended for use, or acquired by, activity violating this Act. In any proceeding, the court may, at any time, enter restraining orders or prohibitions or take such other actions as are in the interest of justice, including the acceptance of satisfactory performance bonds in connection with any property subject to civil forfeiture. If a judgment is entered for the United States under this subsection, the Attorney General is authorized to seize all property or other interests declared forfeited upon such terms and conditions as the Court deems in the interest of justice. All provisions of law relating to the disposition of forfeited property, the proceeds from the sale of such property, the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims, would apply to civil forfeitures under this Act, insofar as applicable and not inconsistent with the provisions of the Act. Such duties as are imposed upon the collection of customs or any other person with respect to seizure, forfeiture, or disposition of property under the customs laws shall be performed with respect to property used, intended for use, or acquired by activity in violation of any provision of this section by such officers or other persons as may be designated for that purpose by the Secretary.

Section 302. (Enforcement)

The provisions of the Act are to be enforced, together with regulations issued thereunder, by the Secretary and the Secretary of the department in which the Coast Guard is operating. The Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, or any State agency, in the performance of their duties.

Any enforcement officer, duly authorized may: (1) board and inspect any fishing vessel or fishing-support vessel which is within the fishery conservation zone, or which he has reason to believe is fishing for anadromous species or Continental Shelf fishery resources; (2) arrest any person, with or without a warrant, if he has reasonable cause to believe that such person has committed a prohibited act; (3) execute any warrant or other process issued by an officer or court of competent jurisdiction; and (4) seize all fish and fishing gear found aboard any fishing vessel or fishing-support vessel which is engaged in any prohibited act.

Under subsection (c), the district courts of the United States are given exclusive jurisdiction over all cases or controversies arising under this Act, except as provided in section 204 relating to the Review Board. The courts may issue all warrants, or other process, to the extent necessary or appropriate. In the case of Guam, actions may be brought and process issued by the District Court of Guam; in the case of the Virgin Islands, by the District Court of the Virgin Islands; and in the case of American Samoa, by the District Court for the District of Hawaii. The district courts shall have jurisdiction over all such cases and controversies without regard to the amount in controversy or the citizenship of the parties.

Section 303. (Repeal)

Section 303 repeals the Act of October 14, 1966 (16 U.S.C. 1091-1094), which created the existing 12-mile contiguous zone, and the Act of May 20, 1964 (16 U.S.C. 1081-1086), as amended by the Act of July 26, 1968 (82 Stat. 445), which regulates foreign fishing within the territorial sea and the contiguous fishery zone.

Section 304. (Authorization for Appropriation)

There are authorized to be appropriated for the purposes of this Act: (1) to the Secretary such sums as are necessary, not to exceed \$22,000,000 for the fiscal year ending June 30, 1976, not to exceed \$5,500,000 for the transitional fiscal quarter ending September 30, 1976; and not to exceed \$22,000,000 for the fiscal year ending September 30, 1977; and (2) to the Secretary of the department in which the Coast Guard is operating, such sums as are necessary, not to exceed \$13,000,000 for the fiscal year ending June 30, 1976; not to exceed \$3,250,000 for the transitional fiscal quarter ending September 30, 1976; and not to exceed \$13,000,000 for the fiscal year ending September 30, 1977.

ESTIMATED COSTS

Pursuant to section 252 of the Legislative Reorganization Act of 1970, the Committee estimates that the cost of this Act for which appropriations are authorized will be as follows:

	[In thousands]		
	Fiscal year 1976	Transitional quarter	Fiscal year 1977
To the Secretary of Commerce.....	\$22,000	\$5,500	\$22,000
To the Secretary of the Department in which the Coast Guard is operating ¹	13,000	3,250	13,000

¹ The Coast Guard estimates provided to the committee were considerably higher than those shown here. Most of these estimates reflected costs of equipment which would have a multipurpose mission and therefore would not be used solely for the purposes of this act.

TEXT OF S. 961, AS REPORTED

A bill to extend, pending international agreement, the fishery management and conservation authority of the United States, and for other purposes.

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

DECLARATION OF POLICY

SEC. 2. (a) FINDINGS.—The Congress finds and declares that—

(1) The coastal species of fish which inhabit the waters off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf, and the anadromous species which spawn in United States rivers and estuaries, constitute a valuable and renewable natural resource. This resource contributes to the food supply and economy of the Nation as well as to health and recreation.

(2) As a consequence of increased fishing pressure and because of the absence of adequate fishing management practices and controls, (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) International agreements have not always prevented or terminated overfishing, nor have they halted the unnecessary reduction of this valuable resource. There is danger that further overfishing will occur before an effective international agreement on fishery management and jurisdiction can be negotiated, signed, ratified, and implemented.

(4) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade.

(5) Management of fisheries as common property resources has led to the use of excessive amounts of capital and labor in many fisheries. As a result, the profits earned by individual fishermen are low, potential economic benefits to the Nation are lost, and the fisheries are depressed industries.

(6) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be restored and maintained so as to provide optimum yields.

(7) A national program for management and conservation of the fishery resources subject to the jurisdiction of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(b) **PURPOSES.**—It is therefore declared to be the purpose of the Congress in this Act—

(1) to take immediate action to protect and conserve the fishery resources of the Nation by declaring management and conservation authority over such resources in a 200 nautical mile zone off the coasts of the United States;

(2) to extend the exclusive management jurisdiction of the United States over the fishery resources of the Continental Shelf and over anadromous species of fish which spawn in the rivers and estuaries of the United States; and

(3) to establish a national fishery management program to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(c) **POLICY.**—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the management and conservation of fishery resources, as provided in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, other than that necessary for the management and conservation of fishery resources, as provided in this Act;

(3) to support and encourage international agreements for the management of highly migratory species of fish and to manage such species when found within the 200-mile zone on the basis of regulations adopted pursuant to such agreements; and

(4) to assure that the national fishery management program (A) utilizes, and is based upon, the best scientific information available; (B) involves, and is responsive to the needs of, interested and affected citizens; (C) promotes efficiency; (D) minimizes the costs of research, administration, management, and enforcement; and (E) is workable and effective.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires, the term—

(1) "anadromous species" means those species of fish which spawn in fresh and estuarine waters of the United States and which migrate to ocean waters;

(2) "Board" means the Fishery Management Review Board established under section 204 of this Act;

(3) "coastal species" means all species of fish, other than highly migratory and anadromous species, which inhabit the waters off the coasts of the United States;

(4) "conservation" refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild and maintain, and useful in rebuilding and maintaining fishery resources and the marine environment; and (B) which are designed to assure that—

(i) a supply of food, and other products, and recreational benefits, may be taken or obtained therefrom on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources, or on the marine ecosystem as a whole, are highly unlikely; and

(iii) there will be a multiplicity of options available with respect to future use of these resources;

(5) "Continental Shelf fishery resources" means living organisms of sedentary species which, at the harvestable stage, are either (A) immobile, (B) in the seabed, or (C) unable to move except in constant physical contact with the seabed or subsoil of the Continental Shelf; including, but not limited to, the following species:

COLEENTERATA

Bamboo Coral—*Acarella* spp.;
 Black Coral—*Antipathes* spp.;
 Gold Coral—*Callogorgia* spp.;
 Precious Red Coral—*Corallium* spp.;
 Bamboo Coral—*Keratoisis* spp.; and
 Gold Coral—*Parazoanthus* spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*;
 Tanner Crab—*Chionoecetes opilio*;
 Tanner Crab—*Chionoecetes angulatus*;
 Tanner Crab—*Chionoecetes bairdi*;
 King Crab—*Paralithodes camtschatica*;
 King Crab—*Paralithodes platypus*;
 King Crab—*Paralithodes brevipes*;
 Lobster—*Homarus americanus*;
 Dungeness Crab—*Cancer magister*;
 California King Crab—*Paralithodes californiensis*;
 California King Crab—*Paralithodes rathbuni*;
 Gold King Crab—*Lithodes aequispinus*;
 Northern Stone Crab—*Lithodes maia*;
 Stone Crab—*Menippe mercenaria*; and
 Deep-sea Red Crab—*Geryon quinquedens*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*;
 Pink Abalone—*Haliotis corrugata*;
 Japanese Abalone—*Haliotis kamtschatkana*;
 Queen Conch—*Strombus gigas*;
 Surf Clam—*Spisula solidissima*; and
 Ocean Quahog—*Artica islandica*.

SPONGES

Glove Sponge—*Hippiospongia canaliculata*;
 Sheepswool Sponge—*Hippiospongia lachne*;
 Grass Sponge—*Spongia graminea*; and
 Yellow Sponge—*Spongia barbera*.

The Secretary, in consultation with the Secretary of State, may add to the foregoing list the name of any other species of living organism which he determines to be such a resource, upon publication of a notice to such effect in the Federal Register, and such species shall thereafter be considered to be included in the term.

(6) "Council" means a Regional Fishery Management Council established under section 202 of this Act;

(7) "fish" means all living marine organisms, including, but limited to, finfish, mollusks, crustaceans, marine mammals, and all other forms of marine animal and plant life (but not including birds);

(8) "fishery" means—

(A) one or more stocks of fish which can be managed as a unit for purposes of management and conservation and which are identified by the appropriate Council and the Secretary on the basis of geographic, scientific, technical, recreational, and economic characteristics; and

(B) the business, organized activity, or act of fishing for such stocks;

(9) "fishery conservation zone" means a zone contiguous to the territorial sea of the United States within which the United States exercises exclusive fishery management and conservation authority;

(10) "fishing" means the catching, taking, harvesting, or attempted catching, taking, or harvesting, of any fish for any purpose other than scientific research, and any activity at sea in support of such actual or attempted catching, taking, or harvesting;

(11) "fishing vessel" means any vessel, boat, ship, contrivance, or other craft which is used for, equipped to be used for, or of a type normally used for, fishing;

(12) "fishing-support vessel" means any vessel, boat, ship, contrivance, or other craft which is used for, equipped to be used for, or of a type which is normally used for, aiding or assisting one or more fishing vessels at sea in the performance of any support activity (except a scientific research vessel), including, but not limited to, supply, storage, refrigeration, or processing;

(13) "foreign fishing" means fishing by a vessel other than a vessel of the United States;

(14) "high seas" means waters beyond the territorial sea or the fishery conservation zone (or the equivalent thereof) of any nation;

(15) "highly migratory species" means species of the tuna which, in the course of their life cycle, spawn and migrate in waters of the ocean;

(16) "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party;

(17) "national standards" means the national standards for fishery management and conservation set forth in section 201 (a) of this Act;

(18) "optimum", with respect to the yield from a fishery, means the amount of fish—

(A) which, if produced, will provide the greatest benefit to the Nation; and

(B) which is prescribed as such by the appropriate Council and the Secretary on the basis of the maximum sustainable yield from such fishery as modified by any relevant economic, social, and/or ecological factors;

(19) "person" has the meaning set forth in section 1 of Title I, United States Code, and, in addition, includes any government, including a foreign government, any entity of a government, and a citizen of a foreign nation;

(20) "Secretary" means the Secretary of Commerce, or his delegate;

(21) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other territories and possessions of the United States;

(22) "stock", with respect to any fish, means a type, species, or other category capable of management as a unit;

(23) "United States", when used in the geographical context, includes all States; and

(2) "vessel of the United States" means any boat, ship, contrivance, or other craft, however propelled or moved, which is—

(A) designed, used, or capable of being used for navigation on or under water; and

(B) documented under the laws of the United States or which is registered under the laws of any State.

TITLE I—FISHERY MANAGEMENT JURISDICTION OF THE UNITED STATES

EXTENT OF JURISDICTION

SEC. 101. (a) **FISHERY CONSERVATION ZONE.**—(1) There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. Within such zone the United States shall, except as provided in subsection (d) of this section, exercise exclusive fishery management authority. The inner boundary of this zone is a line formed by the seaward boundaries of the coastal States, and the outer boundary of this zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline by which the territorial sea is measured.

(b) **ANADROMOUS SPECIES.**—The United States shall exercise, throughout the migratory range of each applicable species, exclusive fishery management authority over anadromous species of fish spawned in the fresh and estuarine waters of the United States: *Provided*, That such management authority shall not extend to such species during the time they are found within the territorial sea or the fishery conservation zone (or the equivalent thereof) of any other nation, as recognized by the United States.

(c) **CONTINENTAL SHELF FISHERY RESOURCES.**—The United States shall exercise exclusive fishery management authority over Continental Shelf fishery resources to the depth at which such resources can be exploited.

(d) **HIGHLY MIGRATORY SPECIES.**—The exclusive fishery management authority of the United States shall not include or be construed to extend to highly migratory species of fish. Such species shall be managed solely pursuant to international fishery agreements established for such purpose.

FOREIGN FISHING

SEC. 102. (a) **GENERAL.**—The Secretary and the Secretary of State, after consultation with the Secretary of the Treasury, may authorize foreign fishing within the fishery conservation zone, for anadromous species, or for Continental Shelf fishery resources, in accordance with the provisions of this section and subject, where appropriate, to (1) title II of this Act, and regulations promulgated under such title, and (2) sections 301 and 302 of this Act.

(b) **ALLOWABLE LEVEL.**—(1) The allowable level of total foreign fishing, if any, shall be set upon the basis of the portion of the allowable catch of any fishery or stock of fish which cannot or will not be harvested by vessels of the United States. Annual allowed foreign fishing and annual fishing by vessels of the United States shall not, for

any fishery or stock of fish, exceed the optimum yield thereof. For purposes of this subsection, the term "allowable catch" means the surplus, from any fishery or stock of fish, which can be taken without exceeding the applicable optimum yield.

(2) In determining the allowable level of total foreign fishing with respect to any particular fishery or stock of fish, the Secretary and the Secretary of State shall utilize the best available scientific information, including, but not limited to, catch and effort statistics and relevant data compiled and made available by any foreign nation.

(3) In determining the allowable level of foreign fishing for any particular nation, with respect to any fishery or stock of fish subject to the exclusive fishery management authority of the United States, the Secretary and the Secretary of State shall consider whether, and to what extent, the vessels of such nation have traditionally fished in such fishery or for such stock.

(c) **RECIPROCITY.**—Foreign fishing shall not be authorized for any foreign nation unless such nation satisfies the Secretary and the Secretary of State that it extends substantially the same fishing privileges to vessels of the United States, with respect to an equivalent fishery or stock of fish within its fishery conservation zone, or its equivalent, or for such nation's anadromous species or Continental Shelf fishery resources, if any.

(d) **CONDITIONS.**—The Secretary and the Secretary of State shall establish appropriate conditions on foreign fishing, which shall be complied with by any foreign-flag fishing or fishing-support vessel of any nation which is authorized to fish pursuant to subsection (a) of this section. Such conditions shall be consistent with the national standards, the fishery management plans, and the management regulations under title II of this Act.

(e) **MISCELLANEOUS.**—(1) The Secretary, through the National Oceanic and Atmospheric Administration, shall verify the authenticity of foreign catch statistics and any other relevant data furnished for purposes of this section. The Secretary may require that observers of placed aboard foreign-flag fishing and fishing-support vessels authorized to fish pursuant to subsection (a) of this section, to the extent deemed necessary by the Secretary to ensure that accurate catch statistics are reported and that the applicable allowable level is not exceeded.

(2) The Secretary shall establish a schedule of reasonable fees which shall be paid to the Secretary by any foreign-flag fishing or fishing-support vessel authorized to fish pursuant to subsection (a) of this section. In determining the level of such fees, the Secretary may take into account the cost of management, research, administration, enforcement, the value of the fishing privilege, and other relevant factors. The fees charged may vary from different categories of fishermen, to the extent deemed reasonable and appropriate.

(3) All pertinent information relating to foreign fishing, including that which is authorized to be collected by the Secretary, shall be made available publicly and shall be published, in summary form, where appropriate, in the Federal Register.

(4) No vessel of a foreign nation authorized to fish pursuant to subsection (a) of this section shall engage in such fishing unless and until the owner or operator thereof establishes and maintains a place

of business in the United States and names an agent in a State who is authorized to receive legal process.

(f) **PROHIBITION.**—Except as provided pursuant to this Act, it shall be unlawful for any vessel, or for any master or other person in charge of any vessel, except a vessel of the United States, to engage in fishing in the internal waters, the territorial sea, or the fishery conservation zone of the United States, or to engage in fishing for anadromous species or Continental Shelf fishery resources.

INTERNATIONAL FISHERY AGREEMENTS

SEC. 103. (a) GENERAL.—(1) The Secretary of State, in cooperation with the Secretary, shall initiate and conduct negotiations with any foreign nation which, prior to the date of enactment of this Act, has been engaged in, or whose citizens have been engaged in, or wish to engage in, fishing within the fishery conservation zone of the United States, or for anadromous species or Continental Shelf fishery resources. The Secretary of State, upon the request of and in cooperation with the Secretary, shall, in addition, initiate and conduct negotiations with any foreign nation in whose fishery conservation zone, or its equivalent, vessels of the United States are engaged, or wish to be engaged, in fishing, or with respect to anadromous species or Continental Shelf fishery resources as to which such nation asserts management authority and for which vessels of the United States fish, or wish to fish. The purpose of such negotiations shall be to conclude international fishery agreements to effectuate the purpose, policy, and provisions of this Act.

(2) Such agreements may include, but need not be limited to, agreements to provide for the management and conservation of—

(A) coastal species which are found both in the fishery conservation zone of the United States and in an adjacent foreign nation's equivalent of such zone;

(B) anadromous species which are found, during the course of their migration, in ocean areas subject to the fishery management authority of more than one nation, or which intermingle on the high seas with anadromous species originating in the rivers and estuaries of other nations;

(C) highly migratory species which may be covered by international fishery agreements; and

(D) coastal species or Continental Shelf fishery resources which are found in areas subject to the fishery management authority of any foreign nation, through measures which allow vessels of the United States to harvest an appropriate portion of such species in accordance with traditional fishing by vessels of the United States.

(b) **REVIEW.**—The Secretary of State shall immediately review, in cooperation with the Secretary, each treaty, convention, and other international agreement to determine whether the provisions of such agreements are consistent with the purposes, policy, and provisions of this Act. If any provision or terms of any such agreement are not so consistent, the Secretary of State shall initiate negotiations to amend or terminate such agreements by not later than September 30, 1976.

(c) **BOUNDARY AGREEMENTS.**—The Secretary of State is authorized and directed to initiate and conduct negotiations with adjacent foreign

nations to establish the boundaries of the fishery conservation zone of the United States in relation to any such nation.

(d) **NONRECOGNITION.**—It is the sense of the Congress that the United States Government shall not recognize the claim of any foreign nation to a fishery conservation zone, or its equivalent, beyond 12 nautical miles from the baseline from which the territorial sea is measured, if such nation—

(1) fails to recognize traditional fishing activity of vessels of the United States, if any, within such zone;

(2) fails to recognize traditional fishing activity of vessels of the United States with respect to anadromous species or Continental Shelf fishery resources as to which such nation asserts management authority; or

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

TERMINATION OF TITLE

SEC. 104. The provisions of this title shall expire and cease to be of any legal effect on such date as a law of the sea treaty (or other comprehensive treaty, convention, or agreement with respect to fishery jurisdiction, which the United States has signed or is a party to) shall come into force or be provisionally applied by the United States.

TITLE II—NATIONAL FISHERY MANAGEMENT PROGRAM

NATIONAL STANDARDS

SEC. 201. (a) GENERAL.—Fishery management plans developed by the Councils, and management regulations promulgated by the Secretary, pursuant to this title, shall conform to the following national standards for fishery management and conservation:

(1) Management and conservation measures shall prevent overfishing and assure on a continuing basis, the optimum yield for each fishery.

(2) Management and conservation measures shall be based upon the best scientific information available.

(3) To the extent possible, and individual stock of fish shall be managed as a unit throughout its range and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Management and conservation measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Management and conservation measures shall, where appropriate, promote efficiency in the utilization of fishery resources.

(6) Management and conservation measures shall allow for unpredicted variations in fishery resources and their environment and for contingencies and possible delays in application.

(7) Management and conservation measures shall, where appropriate, minimize research, administration, and enforcement costs and shall avoid unnecessary duplication.

(b) GUIDELINES.—The Secretary shall establish guidelines, based on the national standards, for the Councils to follow in developing fishery management plans and in developing recommended regulations for the management and conservation of fisheries.

REGIONAL FISHERY MANAGEMENT COUNCILS

SEC. 202. (a) ESTABLISHMENT.—There shall be established, within 120 days after the date of enactment of this Act, seven Regional Fishery Management Councils, as follows:

(1) The North Atlantic Fishery Management Council (hereafter in this title referred to as the "North Atlantic Council"). The North Atlantic Council, which shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, and Virginia, shall be concerned with the fisheries in the Atlantic Ocean seaward of such States.

(2) The South Atlantic Fishery Management Council (hereafter in this title referred to as the "South Atlantic Council"). The South Atlantic Council, which shall consist of the States of North Carolina, South Carolina, Georgia, and Florida, shall be concerned with the fisheries in the Atlantic Ocean seaward of such States.

(3) The Gulf of Mexico Fishery Management Council (hereafter in this title referred to as the "Gulf Council"). The Gulf Council, which shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida, shall be concerned with the fisheries in the Gulf of Mexico seaward of such States.

(4) The Pacific Fishery Management Council (hereafter in this title referred to as the "Pacific Council"). The Pacific Council, which shall consist of the States of California, Oregon, Washington, Idaho, and Alaska, shall be concerned with the fisheries in the Pacific Ocean seaward of California, Oregon, and Washington.

(5) The Caribbean Fishery Management Council (hereafter in this title referred to as the "Caribbean Council"). The Caribbean Council, which shall consist of the Virgin Islands and the Commonwealth of Puerto Rico, shall be concerned with the fisheries in the Caribbean seaward of such States.

(6) The North Pacific Fishery Management Council (hereafter in this title referred to as the "North Pacific Council"). The North Pacific Council, which shall consist of the States of Alaska and Washington, shall be concerned with the fisheries in the northern Pacific Ocean seaward of Alaska.

(7) The Outer Pacific Fishery Management Council (hereafter in this title referred to as the "Outer Pacific Council"). The Outer Pacific Council, which shall consist of the States of Hawaii, American Samoa, Guam, and the Trust Territories of the Pacific, shall be concerned with the fisheries seaward of such States.

(b) REPRESENTATION OF STATES.—Each Regional Fishery Management Council shall reflect the expertise and interests of the several identified States in the ocean area which such Council is granted authority. Each identified States is entitled to three members on each applicable Council, except that in the case of the Caribbean Council, the Virgin Islands and Puerto Rico are entitled to four members each, and in the case of the North Pacific Council, Alaska is entitled to five members.

(c) APPOINTMENTS.—(1) The Governor of each State entitled to membership on a Council may submit to the President a list setting forth the names of individuals qualified to be appointed as members of such Council as representatives of each such State. The President shall appoint, by and with the advice and consent of the Senate, the members to represent each State in the number set forth in subsection (b) of this section, at least one of whom shall be a State official with expertise in fishery management. The terms of office of the members first taking office shall expire as designated by the President at the time of nomination—one at the end of the second year, one at the end of the fourth year, and one at the end of the sixth year. Successors to such members shall be appointed in the same manner as the original members, except that members who have faithfully attended and effectively contributed, in the public interest, to the functioning of such Council are eligible for reappointment. The terms of office of successors to such members shall expire 6 years from the date of expiration of the terms for which their predecessors were appointed. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of such term. As used in this paragraph, a "qualified" individual is one who is knowledgeable and capable of making sound judgments in the public interest with respect to the management and conservation of fishery resources.

(2) The President shall appoint, upon the recommendation of the Secretary, a Federal Government employee to serve on each Council as the representative of the Secretary.

(3) Members of a Council, who are not otherwise employed in any capacity by the Federal or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule, when engaged in the actual performance of duties for such Council, and all members shall be reimbursed for actual expenses incurred in the performance of such duties.

(c) POWERS AND FUNCTIONS.—In addition to any other function assigned under any other provision of this Act, each Council, in accordance with the provisions of this title—

(1) shall select a chairman;

(2) may appoint, and assign duties to, an executive director and such other full- and part-time employees as are necessary to conduct business, and persons to committees as provided in subsection (e) of this section;

(3) shall identify fisheries in need of conservation within its geographic area of authority;

(4) shall develop, and submit to the Secretary, an overall fishery management plan, including separate programs for each fishery, within its respective geographic area of authority, which is in need of management and conservation;

(5) shall develop, and submit to the Secretary, recommended regulations for the management and conservation of fish within its geographic area of authority;

(6) shall monitor fishing activity and review the impact of management regulations within its geographic area of authority and may recommend to the Secretary any appropriate amendments or changes therein;

(7) shall conduct public hearings, at appropriate times and in appropriate locations, so as to allow all interested persons an opportunity to be heard on (A) the overall fishery management plan; (B) any separate management program; (C) recommended regulations; and (D) any amendments to regulations;

(8) may otherwise carry out such other functions as are necessary and appropriate for the effective management and conservation of fishery resources within its geographic area of authority; and

(9) shall report to the Secretary on its activities, plans, programs, findings, and such other matters as are requested.

(d) **SUPPORT.**—The Secretary shall provide to each Council such administrative support as is necessary for effective functioning.

(e) **COMMITTEES.**—(1) Each Council shall establish, maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, and other scientific information as is relevant to management plans or recommended regulations. Each such committee shall be composed of (A) not more than six fisheries scientists and experts, and (B) the director of the appropriate regional research center of the National Marine Fisheries Service, who shall serve as the Chairman.

(2) Each Council shall establish and maintain ad hoc or standing committees for each individual fishery identified by it as in need of conservation, to the extent necessary to assist such Council in the preparation of (A) management programs, (B) recommended regulations, and/or (C) changes or amendments to existing plans or regulations. The members of such committees shall be appointed by the respective councils, and they shall be selected to represent persons who are actually engaged in the fishery involved and to include other persons knowledgeable and interested in the conservation of such fishery.

(3) Members of the committees established pursuant to paragraph (1) and (2) of this subsection shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as provided in section 5703 of title 5, United States Code, for persons in Government service intermittently.

(f) **MISCELLANEOUS PROVISIONS.**—(1) No Council shall have any authority to develop a fishery management plan, or to recommend regulations, with respect to fisheries which are principally located in waters within the boundaries of a single State.

(2) Whenever a fishery extends beyond the geographic area of authority of a single Council, the appropriate Councils shall coordinate or combine their efforts as necessary.

MANAGEMENT REGULATIONS

SEC. 203. (a) **GENERAL.**—As soon as practicable, each Council, or the Secretary, shall identify fisheries in need of conservation. The appropriate Council shall develop (1) a fishery management plan for each such fishery in the order needed; and (2) recommended management regulations as required for the implementation and maintenance of each such plan. Such Council shall submit each such plan and recommend regulations to the Secretary as soon as practicable. Such a plan shall include—

(A) a description of the fishery, including, but not necessarily limited to, the number of vessels involved; the type of gear used; the species of fish involved and their location; the costs likely to be incurred in management; the potential revenue from the fishery; the recreational interests in the fishery; and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(B) a summary of the best scientific information available with respect to the present and probable future condition of, and the maximum sustainable yield from, the fishery;

(C) an assessment of (i) the capacity and desire of vessels of the United States to harvest the optimum yield from the fishery, and (ii) the surplus in the fishery which can be made available for foreign fishing without risk of overfishing; and

(D) any other relevant and appropriate information, data, and evaluations.

(b) **TYPE OF REGULATIONS.**—Recommended management regulations developed under subsection (a) of this section may—

(1) designate zones where, and designate periods when, fishing shall be limited to, or shall not be permitted, or shall be permitted only as to specified vessels or gear;

(2) establish a system which shall, directly or indirectly, limit access to a fishery on a basis which shall recognize, among other considerations, present participation in the fishery, historical fishery practices and dependence on the fishery, the value of existing investments in vessels and gear, the value of the fishing privilege, capability of existing vessels to direct their efforts to other fisheries, State limited access systems, history of compliance with applicable fishing regulations, the optimum yield of the fishery, and the cultural and social framework in which the fishery is conducted;

(3) establish limitations on the catch of fish in any fishery, based on area, species, size, number, weight, sex, incidental catch, total biomass or quotas, and other factors which are necessary for the conservation of such fish;

(4) prohibit, limit, condition, or require the use of specified types of fishing gear, vessels, or equipment for such vessels including devices which may be required solely or partially to facilitate enforcement of this title or the regulations issued hereunder;

(5) require a license or permit to be issued by the Secretary as a condition to engaging in any fishery, upon such terms as may

be prescribed, including the payment of fees appropriate to the value of the fishing license or permit;

(6) require catch and other appropriate statistics from fishermen and processors; and

(7) mandate or encourage such other management and conservation measures as are necessary or appropriate to carry out the purposes of this Act.

(c) **REVIEW.**—(1) The Secretary shall review each management regulation which is recommended and submitted to him by Council to determine whether it is consistent with (A) the national standards and (B) the provisions and requirements of this Act and any other applicable law; before he issues a notice of proposed rulemaking regarding management regulations for the applicable fishery. If such recommended regulations are determined to be so consistent, the Secretary shall adopt them and shall publish, immediately thereafter, a notice of proposed rulemaking with regard thereto. If the recommended regulations are determined not to be so consistent, the Secretary shall notify the applicable Council of such inconsistency and shall indicate the changes that are necessary to make such recommended regulations so consistent. Such Council may change the recommended regulations to make them consistent: *Provided*, That if the Council does not make the necessary changes within 60 days after it receives notice from the Secretary, the Secretary shall make the necessary changes and shall, thereupon, issue the notice of proposed rulemaking.

(2) If any recommended management regulations involve methods and procedures for enforcement at sea, the Secretary shall consult with the Secretary of the department in which the Coast Guard is operating.

(3) If any recommended management regulations would apply to foreign fishing, the Secretary shall consult with the Secretary of State.

(d) **PROPOSED RULEMAKING.**—The Secretary shall publish, in the Federal Register, any management regulations which he proposes to promulgate pursuant to this Act. Each such notice (1) shall request comment thereon; (2) shall designate the fishery or fisheries to which they apply; and (3) shall summarize the recommendations of the applicable Council or Councils, including, where appropriate, an explanation of how the proposed regulations differ from those so recommended and the reasons therefor.

(e) **REGULATIONS.**—The Secretary is authorized to promulgate regulations, in accordance with the provisions of this title and section 553 of title 5, United States Code, without regard to subsection (a) thereof, to govern fishing by vessels of the United States and foreign fishing (1) within the fishery conservation zone (and vessels of the United States fishing for coastal species beyond such zone), (2) for anadromous species, and (3) Continental Shelf fishery resources. In addition, such regulations shall pertain to, but need not be limited to, the operation of the Councils, the setting of fees, procedures for obtaining data and statistics relating to fishing, and other matters relating to the purposes of this Act. Such regulations shall provide for full consultation and cooperation with all other interested Federal agencies and departments, with any coastal State, and with any foreign nation, through the Secretary of State, and for consideration of the views of any interested member of the general public. The

Secretary is further authorized, consistent with the purposes and provisions of this title, to amend or rescind any such regulations.

(f) **EMERGENCY ACTION.**—If the Secretary determines that an emergency situation exists requiring immediate action in the national interest to protect any fishery resources, he shall prepare and promulgate emergency management regulations as soon as practicable. Such regulations shall be issued in accordance with the provisions of section 553 of title 5, United States Code, without regard to subsection (a) thereof.

(g) **ACTION BY GENERAL PUBLIC.**—Any coastal State, or any interested member of the general public, may nominate a fishery as a fishery in need of regulation, by submitting a written statement to the Secretary identifying such fishery and describing the reasons why it should be managed. The Secretary shall promptly forward each such nomination to the appropriate Council for action.

(h) **OVERVIEW.**—The Secretary shall from time to time review the action of the Councils to determine whether the Councils are acting in timely fashion. If the Secretary determines that a Council has failed to recommend management regulations for any fishery within a reasonable time, he shall prepare management regulations and submit them to such Council. Such Council may make changes in such regulations consistent with the national standards: *Provided*, That if such Council does not make such changes within 45 days after it receives such a submission from the Secretary, the regulations shall stand, and the Secretary shall issue a notice of proposed rulemaking with regard to such regulation.

(i) **FISHERIES RESEARCH.**—The Secretary shall initiate and maintain a program of fisheries research designed to acquire knowledge and information, including statistics, on fishery management and conservation, including, but not limited to, biological research concerning interdependence of species, the impact of pollution, the impact of wetland and estuarine degradation, and other factors bearing upon the abundance and availability of fish.

FISHERY MANAGEMENT REVIEW BOARD

SEC. 204. (a) **ESTABLISHMENT.**—There is established an independent instrumentality to be known as the Fishery Management Review Board. The Board shall have exclusive and original jurisdiction to hear the appeals described in subsection (c) of this section.

(b) **MEMBERSHIP.**—(1) The Board shall be composed of five members who shall be appointed by the President, by and with the advice and consent of the Senate. Of such members at least three shall be individuals who shall be appointed by the President from a list of qualified individuals submitted to the President by the National Governor's Conference, such list to consist of not less than three such individuals for each vacancy. Members of the Board shall not engage in any other business, vocation, or profession during their term of office. As used in this paragraph, a "qualified" individual is one who is knowledgeable and capable of making sound judgments with respect to appeals before the Board.

(2) The members of the Board shall be appointed for a term of 3 years, except that (A) the terms of office of the member first taking office shall expire as designated by the President at the time of nomination; and (B) any individual appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term and in the same manner in which such predecessor was appointed. Successors to the members of the Board first taking office shall be appointed in the same manner as the original members. Each member of the Board shall be eligible for reappointment.

(3) The members of the Board shall select one of their number to serve as Chairman.

(4) The Board is authorized to appoint an executive secretary and such administrative law judges and other employees as are necessary for the proper performance of its duties.

(c) APPEALS TO THE BOARD.—(1) Any person who is adversely affected or aggrieved by, or who suffers legal wrong through (A) any final management regulation promulgated by the Secretary pursuant to this title, or (B) a decision by the Secretary to issue, transfer, revoke, suspend, modify, or renew a license or permit, may obtain review of such action by the Board if he files a request therefor with the Board not later than 60 days after the date of publication of such final regulation or decision.

(2) Any Council whose recommended management regulations were determined by the Secretary to be not consistent with the national standards may obtain review of the Secretary's action by the Board if it files a request therefor with the Board not later than 60 days after the date of publication of any final management regulation involved.

(3) In any action under this section, the Secretary or any affected Council, if not a party, may intervene as a matter of right.

(4) Review proceedings under this section shall be in accordance with the provisions of section 554 of title 5, United States Code. To the extent possible, such proceedings shall be held in the locality closest to the fishery involved. If the Board finds that justice so requires, it may issue an order (A) postponing the effective date of an action of the Secretary or (B) preserving the status or rights of any person, pending the outcome of such review proceedings.

(d) REVIEW STANDARD.—(1) In any review requested by a Council relating to any management regulation, the Board shall uphold the action of the Secretary unless it finds that his action—

(A) was not consistent (i) with the national fishery standards or (ii) with the provisions and requirements of this Act or any other applicable law;

(B) was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(C) was contrary to constitutional right, privilege, power to immunity;

(D) was clearly not supported by the facts and record available to the Secretary; or

(E) did not observe the procedure required by this Act or other law.

If the Board does not uphold the action of the Secretary, it shall enter a final decision declaring such action invalid together with the

reasons therefor; remanding the matter to the Secretary; and directing the Secretary to take, after consultation with the affected Council, appropriate action.

(2) In an appeal relating to any other matter, the scope of review shall be as set forth in section 706 of title 5, United States Code.

(e) POWERS.—(1) The Board or any member thereof may, for the purpose of carrying out the provisions of this section, hold such hearings, sit and act at such times and places, administer such oaths, and require by subpoena or other order the attendance and testimony of such witnesses and the production of such evidence as the Board or member deems advisable. Subpenas may be issued under the signature of the Chairman of the Board, or that of any duly designated member of the Board, and may be served by any person designated for such purpose by such Chairman. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Such attendance of witnesses and production may be required from any place in the United States to any place designated for such hearing.

(2) In case of refusal to obey a subpoena or other order, issued under paragraph (1) of this subsection, by any person who resides, is found, or transacts business within any judicial district of the United States, the district court of the United States for any such district shall have jurisdiction and shall, upon the request of the Chairman of the Board, issue to such person an order to appear and produce evidence. Any failure to obey such an order shall be punishable by such court as a contempt of court.

(3) The Administrator of General Services shall furnish the Board with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(f) COMPENSATION.—Members of the Board shall be compensated at the rate provided for level V of the Executive Schedule (5 U.S.C. 5316), and shall be reimbursed for travel expenses, including per diem in lieu of subsistence.

(g) JUDICIAL REVIEW.—Any person who is adversely affected or aggrieved by, or who suffers legal wrong through, a decision of the Board may, not later than 60 days after the date of any such decision, seek judicial review of such decision in the United States Court of Appeals for the circuit nearest to the fishery involved.

RELATIONSHIP TO STATE LAWS

SEC. 205. Nothing in this Act shall be construed to extend the jurisdiction of any State over any natural resources beneath and in the waters beyond its seaward boundaries, or to diminish the jurisdiction of any State over any natural resource beneath and in the waters within its boundaries.

INTERSTATE COOPERATION AND UNIFORM LAWS

SEC. 206. The Secretary shall encourage cooperative action by the States and Councils for the management and conservation of coastal and anadromous species of fish and Continental Shelf fishery resources, and shall encourage, insofar as practicable, the enactment of improved and uniform State laws relating to the management and conservation of such fish.

TITLE III—MISCELLANEOUS PROVISIONS

PROHIBITED ACTS AND PENALTIES

SEC. 301. (a) PROHIBITED ACTS.—(1) It is unlawful for any person to—

(A) violate any provision of this Act, or any regulation issued hereunder, regarding fishing within the fishery conservation zone or with respect to anadromous species or Continental Shelf fishery resources;

(B) violate any provision of any international fishery agreement to which the United States is a party and which is negotiated or reviewed pursuant to this Act, to the extent that such agreement applies to or covers fishing within the fishery conservation zone;

(C) ship, transport, purchase, sell or offer for sale, import, export, possess, control, or maintain in his custody any fish taken in violation of paragraphs (A) or (B) of this subsection, if such person knew or had reason to know that such taking was not lawful;

(D) refuse to permit a duly authorized representative of the Secretary, or of the Secretary of the department in which the Coast Guard is operating, to board a fishing vessel or fishing-support vessel subject to his control, if the purpose of such requested boarding is to inspect the catch, fishing gear, ship's log, or other records or materials aboard such vessel; or

(E) fail to cooperate with a duly authorized representative of the Secretary, or of the Secretary of the department in which the Coast Guard is operating, engaged in a reasonable inspection pursuant to paragraph (D) of this subsection, or to resist any lawful arrest.

(2) For the purposes of this section, it shall be a rebuttable presumption that all fish found on board a vessel seized in connection with an act prohibited under this section were taken or retained in violation of this Act.

(b) CRIMINAL PENALTIES.—Any person who willfully commits an act prohibited by subsection (a) of this section shall, upon conviction, be fined not more than \$100,000 or imprisoned for not more than 1 year, or both.

(c) CIVIL FORFEITURE.—(1) Any district court of the United States shall have jurisdiction, upon application by the Secretary or the Attorney General, to order forfeited to the United States any fish or fishing gear, used, intended for use, or acquired by, activity in violation of any provision of subsection (a) of this section. In any case such proceeding, such court may at any time enter such restraining orders or prohibitions or take such other actions as are in the interest of justice, including the acceptance of satisfactory performance bonds in connection with any property subject to civil forfeiture.

(2) If a judgment is entered for the United States under this subsection, the Attorney General is authorized to seize all property or other interest declared forfeited upon such terms and conditions as are in the interest of justice. All provisions of law relating to the disposition

of forfeited property, the proceeds from the sale of such property, the remission or mitigation of forfeitures for violation of the customs laws, and the compromise of claims, shall apply to civil forfeitures incurred, or alleged to have been incurred, under this subsection, insofar as applicable and not inconsistent with the provisions of this section. Such duties as are imposed upon the collector of customs or any other person with respect to seizure, forfeiture, or disposition of property under the customs laws shall be performed with respect to property used, intended for use, or acquired by activity in violation of any provision of subsection (a) of this section by such officers or other persons as may be designated for that purpose by the Secretary.

ENFORCEMENT

SEC. 302. (a) GENERAL.—The provisions of this Act shall be enforced, together with regulations issued hereunder by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, or any State agency, in the performance of such duties.

(b) POWERS.—Any person, duly authorized pursuant to subsection (a) of this section, may—

(1) board and inspect any fishing vessel or fishing-support vessel which is within the fishery conservation zone, or which he has reason to believe is fishing for anadromous species or Continental Shelf fishery resources;

(2) arrest any person, with or without a warrant, if he has reasonable cause to believe that such person has committed an act prohibited by section 301(a) of this title;

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

(4) seize all fish and fishing gear found aboard any fishing vessel or fishing-support vessel which is engaged in any act prohibited by section 301(a) of this title.

(c) COURTS.—The district courts of the United States shall have exclusive jurisdiction over all cases or controversies arising under this Act, except as provided in section 204 of this Act. Such courts may issue all warrants, or other process, to the extent necessary or appropriate. In the case of Guam, actions may be brought and process may be issued by the District Court of Guam; in the case of the Virgin Islands, by the District Court of the Virgin Islands; and in the case of American Samoa, by the District Court for the District of Hawaii. The aforesaid courts shall have jurisdiction over all such cases and controversies without regard to the amount in controversy or the citizenship of the parties.

REPEAL

SEC. 303. (a) The Act of October 14, 1966 (16 U.S.C. 1091-1094), is repealed.

(b) The Act of May 20, 1964 (16 U.S.C. 1081-1086), as amended by the Act of July 26, 1968 (82 Stat. 445), is repealed.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 304. There are authorized to be appropriated for the purposes of this Act—

(1) to the Secretary such sums as are necessary, not to exceed \$22,000,000 for the fiscal year ending June 30, 1976; not to exceed \$5,500,000 for the transitional fiscal quarter ending September 30, 1976; and not to exceed \$22,000,000 for the fiscal year ending September 30, 1977; and

(2) to the Secretary of the department in which the Coast Guard is operating such sums as are necessary, not to exceed \$13,000,000 for the fiscal year ending June 30, 1976; not to exceed \$3,250,000 for the transitional fiscal quarter ending September 30, 1976; and not to exceed \$13,000,000 for the fiscal year ending September 30, 1977.

AGENCY COMMENTS

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., April 23, 1975.

HON. WARREN G. MAGNUSON,
Chairman, Committee on Commerce,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for this Department's views on S. 961, a bill "To extend, pending international agreement, the fisheries management responsibility and authority of the United States over the fish in certain ocean areas in order to conserve and protect such fish and depletion, and for other purposes."

S. 961 would establish a contiguous fisheries zone of 200 miles for the exclusive fishery management responsibility of the United States and extend United States responsibility for the anadromous fish to wherever it is found in its migratory pattern, except the contiguous zone of other nations. Foreign fishermen would be allowed to fish in the zone, at the discretion of the Secretaries of State, Commerce and Treasury, provided the foreign nation reciprocates. It would also establish a Fisheries Management Council which would prepare a plan for marine fisheries conservation and consult with Federal and State Governments on fisheries management. The bill would also authorize the Secretary of State to negotiate international fishing agreements and carries criminal and civic sanctions for violating the provisions of, or regulations promulgated under, the bill regarding fisheries management conservation.

Because this legislation pertains primarily to commercial fisheries and because the Federal responsibility therefor has been transferred to the Department of Commerce pursuant to Reorganization Plan No. 4 of 1970, this Department has no special interest in S. 961. Accordingly, we will not plan to make comment unless, in light of the foregoing, your Committee requests us to do so.

Sincerely yours,

KEN M. BROWN,
Legislative Counsel.

APPENDIX I

LIST OF CONVENTION AND BILATERAL FISHERY AGREEMENTS TO WHICH THE UNITED STATES IS A PARTY¹

International Convention for the Regulation of Whaling, December 2, 1946, 62 Stat. 1716, TIAS 1849 (effective November 10, 1948). Termination—Indefinite. Member countries are: Argentina, Australia, Canada, Denmark, France, Iceland, Japan, Mexico, Norway, Panama, South Africa, U.S.S.R., U.K., United States. Areas of geographical interest Worldwide. Species concerned—Only whale resources.

Convention for the Establishment of an Inter-American Tropical Tuna Commission, May 31, 1949, 1 UST 230; TIAS 2044 (effective March 3, 1950). Termination—Indefinite. Member countries are: Costa Rica, United States, Mexico, Panama, Canada, Japan and France. Areas of geographical interest—Eastern Tropical Pacific. Species concerned—Yellowfin, skipjack tuna and tuna bait fishes.

Convention on Conservation of North Pacific Fur Seals, February 9, 1957, 8 UST 2283; TIAS 3948 (effective October 14, 1957). Termination—Review in 1975. Member countries are: Canada, Japan, United States, U.S.S.R. Areas of geographical interest—North Pacific. Species concerned—Fur seals.

Convention with Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bearing Sea, March 2, 1953, 5 UST; TIAS 2900 (effective October 28, 1953). Termination—Indefinite. Member countries are: Canada and United States. Areas of geographical interest—Eastern Bering Sea and Northeast Pacific. Species concerned—Halibut.

International Convention for the High Seas Fisheries of the North Pacific Ocean, May 9, 1952, 4 UST 380; TIAS 2786 (effective June 12, 1953). Termination—Indefinite. Member countries are: Canada, Japan, United States. Areas of geographical interest—North Pacific. Species concerned—Fish and shellfish resources, particular emphasis is on salmon, halibut and herring.

Convention with Canada on the Sockeye Salmon Fisheries, May 26, 1930, 50 Stat. 1355 (effective July 25, 1937). Termination—Indefinite. Member countries are: Canada and United States. Areas of geographical interest—Fraser River, Puget Sound, Strait of Juan de Fuca. Species concerned—Sockeye salmon (includes pink salmon as a result of a 1956 Protocol to the Convention).

International Convention for the Northwest Atlantic Fisheries, February 8, 1949, 1 UST 477; TIAS 2059 (effective July 3, 1950). Termination—Indefinite. Member countries are: Bulgaria, Canada, Denmark, Federal Republic of Germany, France, Iceland, Italy, Japan, Norway, Poland, Portugal, Romania, U.S.S.R., Spain, U.K., United States. Areas of geographical interest—Western Atlantic from Rhode Island east and north to Davis Strait. Species concerned—Special emphasis has been put on haddock, yellowtail flounder and herring. Other regulated species include red and silver hake, mackerel, pollock, cod, redfish and harp and hood seals.

¹ Source: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce; January 1974.

International Convention on the Conservation of Atlantic Tunas, May 14, 1966, TIAS 6767 (effective March 21, 1969). Termination—Indefinite. Member countries are: Japan, Canada, United States, Brazil, France, Portugal, Spain, Morocco, Ghana, Republic of South Africa, Korea, Senegal, and the Ivory Coast. Areas of geographical interest—All waters of the Atlantic Ocean. Species concerned—Tuna and tuna-like species.

Agreement with Brazil on the Conservation of Shrimp, May 9, 1972 (effective February 14, 1973). Termination—June 1974. Member countries are: United States and Brazil. Area of geographical interest—Large triangular area off northeast coast of Brazil. Species concerned—Shrimp.

Agreement with the U.S.S.R. on the Middle Atlantic Fishery, December 13, 1968, 19 UST 7661, TIAS 6603 (effective March 21, 1969) (2 years). Termination—December 1974. Member countries are: U.S.S.R. and United States. Areas of geographical interest—Middle Atlantic area and waters of the 50 to 100 fathoms zone from Rhode Island to Virginia and a small area within the U.S. contiguous zone off New Jersey and Long Island. Species concerned: Scup, flounder and other groundfish, river herring, red hake, silver hake, black sea bass, bluefish, menhaden and lobster.

Agreement with South Korea Concerning Cooperation in Fisheries, November 24, 1972, TIAS 7517 (effective December 12, 1972) (5-year agreement). Termination—December 1977. Member countries are: United States and South Korea. Area of geographical interest—North Pacific and Bering Sea east of 175° W., Longitude. Species concerned—Salmon and halibut.

Agreement with Japan on the King and Tanner Fisheries of the Eastern Bering Sea, November 25, 1964, 15 UST 2076, TIAS 7527 (effective November 25, 1964); modified and extended December 1972 (2 years). Termination—December 1974. Member countries are: Japan and United States. Areas of geographical interest—Western continental shelf of the United States. Species concerned—King and Tanner crabs.

Agreement With Japan on the Contiguous Fishery Zone, May 9, 1967, 18 UST 1309, TIAS 7528, modified and amended, December 1972 (2 years). Termination—December 1974. Member countries are: Japan and United States. Areas of geographical interest—Northeast Pacific, Eastern Bering Sea, Gulf of Alaska and the U.S. contiguous zone off Alaska and the State of Washington. Species concerned—Species of mutual concern with emphasis on halibut, Pacific Ocean perch and blackcod.

Agreement with U.S.S.R. on Fisheries Operations in the Northeastern Pacific (Gear Conflict), December 14, 1964, 15 UST 2179 (effective December 14, 1964), renegotiated February 1973 (2 years). Termination—February 1975. Member countries are: U.S.S.R. and United States. Area of geographical interest—Gulf of Alaska beyond the 12-mile fishery zone. Species concerned—King crab (Soviets agreed not to fish around Kodiak Islands for specified periods when U.S. king crab fishermen fish extensively with fixed crab gear).

Agreement with the U.S.S.R. on the King and Tanner Crab Fisheries of the Eastern Bering Sea. February 5, 1965, 16 UST 24; TIAS 5752 (effective February 5, 1965), negotiated and extended Feb-

ruary 1973 (2 years). Termination—February 1975. Member countries are U.S.S.R. and United States. Areas of geographical interest—U.S. continental shelf in the eastern Bering Sea. Species concerned—King and Tanner crabs.

Agreement with the U.S.S.R. on the Contiguous Fishery Zone, February 13, 1967, 18 UST 190; renegotiated and extended February 1973 (2 years). Termination—February 1975. Member countries are: U.S.S.R. and United States. Areas of geographical interest—Northeast Pacific including the U.S. contiguous zone. Species of mutual concern particularly interest on halibut, king crab, salmon and rockfish.

Agreement with U.S.S.R. Concerning Claims Resulting from Damage to Fishing Vessels or Gear and Measures to Prevent Fishing Conflicts, February 21, 1973 (effective February 21, 1973). Termination—Indefinite, review in February 1975. Member countries are U.S.S.R. and United States. Area of geographical interest—Northeastern Pacific, Bering Sea and Western areas of the Atlantic. Species concerned—primarily gear conflicts associated with crab, and halibut fisheries of the Northeastern Pacific and between lobster and mobile gear fisheries in the Western Atlantic.

Agreement with Poland Regarding Fisheries in the Western Region of the Middle Atlantic Ocean, June 12, 1969, modified and extended June 1973. (1 year). Termination—June 1975. Member countries are: Poland and United States. Areas of geographical interest—Western region of the Middle Atlantic Ocean and three areas within the United States and contiguous zone off Long Island, New Jersey and Virginia. Species concerned—Scup, flounders and other groundfish, red hake, silver hake, menhaden, river herring and black sea bass, bluefish and lobster. The Agreement also establishes a United States-Polish Fisheries Conciliation Board—to assist in the expeditions settlement of damage claims involving conflicts between fixed and mobile gear fisheries.

Agreement with Canada Concerning Reciprocal Fisheries Privileges, April 24, 1970, see 52 Department of State Bull. 640 (1970). (2 years), extended in April 1972 (1 year) and June 1973. Termination—April 1974. Member countries are: Canada and United States. Areas of geographical interest—The fishery contiguous zone extending along east and west coast of both nations, south of 63° N. Species concerned—Species of mutual concern with emphasis on Pacific salmon, and the transfer of herring on the east coasts of the United States and Canada (fishing for any species of clams lobsters, scallops and shrimp in the reciprocal fishing area of either country is excluded).

Agreement with Romania on Fisheries in the Western Region of the Middle Atlantic Ocean, December 4, 1973 (effective December 4, 1970), Termination: December 1975. Member countries: Romania and the United States. Areas of geographic interest: Western region of the Middle Atlantic Ocean. Species concerned: Scup, flounders and other groundfish, red hake, silver hake, manhaden, river herring, black sea bass, bluefish and lobster.

Convention on Fishing and Conservation of the Living Resources of the High Seas, April 29, 1958, TIAS 5969 (entered into force March 20, 1966). General applicability. One of the four 1958 Law of the Sea Treaties.

Convention on the Continental Shelf, April 29, 1958, TIAS 5578 (entered into force June 10, 1964). Gives exclusive jurisdiction to coastal state over creatures of the Continental Shelf. One of the four Law of the Sea Treaties.

APPENDIX II

NATIONS WHICH HAVE UNILATERALLY EXTENDED THEIR EXCLUSIVE FISHERY JURISDICTION
BEYOND 12 NAUTICAL MILES¹

Country	Exclusive fishing jurisdiction (nautical miles)	Notes
Argentina.....	200	
Brazil.....	200	
Cameroon.....	18	
Chile.....	200	
Congo.....	3-15	15 unconfirmed.
Costa Rica.....		"Specialized competence" over living resources to 100 mi.
Ecuador.....	200	
El Salvador.....	200	
Gabon.....	100	
Gambia.....	50	Unconfirmed. Some apparent confusion in drafting of Act No. 9, 1969.
Ghana.....	30	
Guinea.....	130	
Haiti.....	15	Congressional Decree 25 of Jan. 17, 1951, set a 200-nmi territorial sea. Art. 5 of the Honduran Constitution accepts a 12-nmi limit, but the earlier 200-nmi limit is still on the books.
Iceland.....	50	
Iran.....	50	Limited in Persian Gulf to continental shelf boundaries.
Korea, Republic of.....		Archipelago principle.
Madagascar.....	50	
Maldives.....	2 100	Maximum 150, letter to FAO, May 11, 1969.
Mauritania.....	30	
Morocco.....	70	Except for Strait of Gibraltar.
Nicaragua.....	200	
Nigeria.....	30	
Oman.....	50	
Pakistan.....	50	
Panama.....	200	
Peru.....	200	
Philippines.....		Archipelago principle.
Senegal.....	122	
Sierra Leone.....	200	
Somalia.....	200	
Tanzania.....	50	
Tonga.....		Do.
Tunisia.....	12	Exclusive fisheries zone follows the 50-m isobath for part of coast (maximum 65 mi).
Uruguay.....	200	
Vietnam, North.....	2 20	
Vietnam, Republic of.....	50	

¹ Source: Limits in the Seas No. 36, National Claims to Maritime Jurisdiction (revised), The Geographer, Office of the Geographer, Bureau of Intelligence and Research, U.S. Department of State, Apr. 1, 1974.

² Approximate.

³ Kilometers.

Many nations also claim exclusive jurisdiction over certain "sedentary species" in accordance with article 2 of the 1958 Geneva Convention on the Continental Shelf. In addition, some states have proclaimed "fishery conservation zones" within which they reserve the right to regulate certain fishing activities, although no claim to exclusive fishery jurisdiction is made.

Union Calendar No. 270

94th Congress }
1st Session }

HOUSE OF REPRESENTATIVES

{ REPORT
No. 94-542



POTENTIAL IMPACT OF THE PROPOSED 200-MILE FISHING ZONE ON U.S. FOREIGN RELATIONS

SPECIAL OVERSIGHT REPORT OF
THE COMMITTEE ON INTERNATIONAL RELATIONS

TOGETHER WITH

ADDITIONAL AND MINORITY VIEWS

ON

**H.R. 200, THE MARINE FISHERIES
CONSERVATION ACT OF 1975**

A REPORT MADE PURSUANT TO RULE X,
CLAUSE 3(d) OF THE RULES OF THE
HOUSE OF REPRESENTATIVES



OCTOBER 8, 1975.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1975

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(II)

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, D.C., October 8, 1975.

HON. CARL ALBERT,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: By direction of the Committee on International Relations, I herewith submit the committee's special oversight report on the foreign policy implications of H.R. 200, the Marine Fisheries Conservation Act of 1975.

THOMAS E. MORGAN, *Chairman.*

(III)

CONTENTS

	Page
I. Introduction.....	1
Legislative history.....	1
Impact of H.R. 200 on the jurisdiction of the Committee on International Relations.....	1
Committee action.....	2
Summary of committee findings and conclusions.....	3
II. The broad range of U.S. ocean interests can best be protected by international agreements, not by unilateral actions.....	4
III. H.R. 200 would damage U.S. objectives at the Law of the Sea Con- ference including our efforts to obtain special regimes for salmon and for distant-water fisheries such as tuna and shrimp.....	6
IV. There are alternative means of achieving a transition to a 200-mile coastal fisheries zone by international agreements, not by unilateral action.....	6
V. Unilateral action will adversely affect other important U.S. foreign policy interests.....	7
VI. H.R. 200 would provoke retaliatory action by other nations.....	7
VII. H.R. 200 is unenforceable.....	8
VIII. H.R. 200 is inconsistent with longstanding U.S. policy.....	8
IX. H.R. 200 violates U.S. treaty obligations.....	9
X. H.R. 200 is not an interim measure.....	9
Additional views of Hon. Benjamin A. Gilman.....	11
Minority views of Hon. Stephen J. Solarz, Hon. Don Bonker, and Hon. Robert J. Lagomarsino.....	15

Union Calendar No. 270

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } No. 94-542

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OCTOBER 8, 1975.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

Mr. MORGAN, from the Committee on International Relations
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

I. INTRODUCTION

LEGISLATIVE HISTORY

H.R. 200, the Marine Fisheries and Conservation Act of 1975, was introduced by the Hon. Gerry E. Studds and 24 cosponsors on January 14, 1975, and referred to the Committee on Merchant Marine and Fisheries.

The bill was reported favorably, with amendments, by the Committee on Merchant Marine and Fisheries on August 20, 1975.

The stated purpose of H.R. 200, as amended, is to provide for the protection, conservation, and enhancement of the fisheries resources in waters adjacent to the United States by unilaterally extending the exclusive fisheries zone of the United States from 12 to 200 miles effective July 1, 1976.

IMPACT OF H.R. 200 ON THE JURISDICTION OF THE COMMITTEE ON INTERNATIONAL RELATIONS

The interest of the Committee on International Relations in the bill, H.R. 200, stems from the jurisdiction vested in the committee by the Rules of the House of Representatives. H.R. 200, in both its language and implications, impinges upon the committee's jurisdiction over relations with foreign countries generally, the establishment of boundary lines between the United States and foreign nations, international conferences and congresses, and United Nations organizations. In addition, the Rules of the House grant the committee "special oversight functions" concerning international fishing agreements.

Rule X(i)(1) gives the committee jurisdiction over "relations of the United States with foreign countries generally." This rule encompasses treaty relationships, some of which would be disrupted by the passage of H.R. 200.

Rule X(i)(3) gives the committee jurisdiction over "establishment of boundary lines between the United States and foreign nations." The unilateral establishment of a 200-mile seaward fishing zone would, in effect, result in new areas of jurisdiction for resource purposes which if similar claims were made by other countries which are closer than 400 miles to U.S. territory, would require delimitation of the boundaries of this jurisdiction with countries such as Canada, Mexico, Cuba, the Soviet Union, Great Britain, Haiti, the Dominican Republic, and the Bahamas.

Rule X(i)(5) gives the committee jurisdiction over "International conferences and congresses." The Third United Nations Conference on Law of the Sea, is presently considering the entire matter of seaward boundaries, both for territorial and resource purposes. H.R. 200 makes specific reference to this conference, over which the committee has exercised oversight for several years.

Rule X(i)(12) gives the committee jurisdiction over "United Nations organizations." The Law of the Sea Conference is an activity

being conducted under the auspices of the United Nations pursuant to resolutions by the United Nations General Assembly. Passage of H.R. 200 would seriously affect the work of the Conference and would have definite ramifications for U.S. interests at the United Nations.

Rule X clause 3(d) gives the committee "special oversight functions" with respect to laws and programs relating to "international fishing agreements." This clause envisages the committee playing a special role in the oversight and review of laws and programs affecting international fisheries. The proposed legislation directly and immediately affects a number of international fishing agreements between the United States and other nations, and related implementing legislation and programs.

The Committee on International Relations has been conducting hearings on matters relating to the Third United Nations Conference on Law of the Sea since 1968. The Subcommittee on International Organizations has held numerous hearings; hearings at the full committee level have also been held. In 1973, the House passed House Resolution 330, the "Law of the Sea Resolution," which originated in the Committee on International Relations. That resolution, passed by a vote of 303 to 57, endorsed U.S. objectives for a just and equitable ocean treaty. Until the convening of the 94th Congress, when primary jurisdiction over international fishing agreements was transferred to the Committee on Merchant Marine and Fisheries, the Committee on International Relations exercised jurisdiction over a large number of bills concerned with U.S. implementation of international fishing agreements. Under the new rules of the House, the committee retains "special oversight functions" on this subject.

COMMITTEE ACTION

On the basis of jurisdiction granted to the Committee on International Relations by the Rules of the House over matters pertaining to H.R. 200, the chairman of the committee requested sequential referral of H.R. 200 after it had been reported favorably by the Committee on Merchant Marine and Fisheries. When the Speaker ruled against sequential referral and assigned the bill to the Union Calendar, the committee exercised its oversight functions in lieu of jurisdiction under sequential referral.

On September 24, 1975, the Committee on International Relations held an oversight hearing on H.R. 200.

At the outset of the hearing, Chairman Thomas E. Morgan brought to the committee's attention a letter dated September 24, 1975, which he had received from Secretary of State Henry A. Kissinger. In his letter, Secretary Kissinger stated that H.R. 200 "raises serious questions of foreign policy." Secretary Kissinger's letter also included the text of a speech on international law which he delivered to the American Bar Association Annual Convention on August 11, 1975. The relevant excerpts from that speech are as follows:

Many within Congress are urging us to solve this problem unilaterally. A bill to establish a 200-mile fishing zone passed the Senate last year; a new one is currently before the House.

The administration shares the concern which had led to such proposals. But unilateral action is both extremely dan-

gerous and incompatible with the thrust of the negotiations described here. The United States has consistently resisted the unilateral claims of other nations, and others will almost certainly resist ours. Unilateral legislation on our part would almost surely prompt others to assert extreme claims of their own. Our ability to negotiate an acceptable international consensus on the economic zone will be jeopardized. If every state proclaims its own rules of law and seeks to impose them on others, the very basis of international law will be shaken, ultimately to our own detriment.

To conserve the fish and protect our fishing industry while the treaty is being negotiated, the United States will negotiate interim arrangements with other nations to conserve the fish stocks, to insure effective enforcement, and to protect the livelihood of our coastal fishermen. These agreements will be a transition to the eventual 200-mile zone. We believe it is in the interests of states fishing off our coasts to cooperate with us in this effort.

During the course of the hearing, the committee received testimony from the following witnesses: Hon. Mike Gravel, U.S. Senator from the State of Alaska; Representative Robert L. Leggett, chairman of the Subcommittee on Fisheries and Wildlife; Representative Gerry E. Studds, the principal sponsor of H.R. 200; Hon. Carlyle E. Maw, Under Secretary of State for Security Assistance and the President's Special Representative to the Law of the Sea Conference; Ambassador John Norton Moore, Chairman of the Interagency Task Force on the Law of the Sea; and Ambassador Thomas A. Clingan, Jr., expert consultant to the Department of State for fisheries affairs.

In addition, the committee also received statements on H.R. 200 from the following individuals and organizations: the United States Committee for the Oceans; John Temple Swing, vice president and secretary of the Council on Foreign Relations; Hon. Jay S. Hammond, Governor of Alaska; the National Shrimp Congress; the American Tunaboat Association; the Tuna Research Foundation; the National Research Council, Commission on Natural Resources; and the National Parks and Conservation Association.

Pursuant to rule X, clause 3(d) of the rules of the House, the committee met in open session on October 3, 1975, to consider an oversight report on the foreign policy implications of H.R. 200.

On October 7, 1975, the committee again met in open session to continue its consideration of the oversight report and by a vote of 15 ayes to 5 nays, with one voting present, the committee approved a motion to direct the chairman to transmit a copy of the report to the Speaker of the House.

SUMMARY OF COMMITTEE FINDINGS AND CONCLUSIONS

In submitting this oversight report, the Committee on International Relations is expressing its interest in seeking the most effective means of protecting all U.S. interests in the oceans including fisheries, while respecting international law and treaty obligations.

It is the considered judgment of the Committee on International Relations that H.R. 200 should not pass for the following reasons:

The broad range of U.S. ocean interests can best be protected by international agreements, not by unilateral actions.

H.R. 200 would damage U.S. objectives at the Law of the Sea Conference including our efforts to obtain special regimes for salmon and for distant-water fisheries such as tuna and shrimp.

There are alternative means of achieving a transition to a 200-mile coastal fisheries zone by international agreements, not by unilateral action.

Unilateral action will adversely affect other important U.S. foreign policy interests.

H.R. 200 would provoke retaliatory action by other nations.

H.R. 200 is unenforceable.

H.R. 200 is inconsistent with longstanding U.S. policy.

H.R. 200 violates U.S. treaty obligations.

H.R. 200 is not an interim measure.

II. THE BROAD RANGE OF U.S. OCEAN INTERESTS CAN BEST BE PROTECTED BY INTERNATIONAL AGREEMENTS, NOT BY UNILATERAL ACTIONS

H.R. 200 poses the important question of whether nations will determine the uses of the oceans by uncontrolled unilateral assertions of conflicting national claims or by a set of rules broadly agreed upon through negotiations. The necessity for a comprehensive ocean treaty which would establish new rules for uses of the oceans was created precisely by the danger of heightened conflicts as a result of national claims, made more so by the increasing application of modern technology to the development of economic resources in the oceans. The Third United Nations Conference on Law of the Sea has before it the task of arresting the trend toward chaos in the oceans by reaching agreements which can insure a reasonable degree of order as uses of the ocean increase. The U.S. Government—both the executive and legislative branches—is committed to achieving that goal.

Secretary of State Kissinger on August 11, 1975, described the Law of the Sea Conference as “* * * one of the most comprehensive and critical negotiations in history—an international effort to devise rules to govern the domain of the oceans. No current international negotiation is more vital for the long-term stability and prosperity of our globe. * * * The breakdown of the current negotiation, a failure to reach a legal consensus, will lead to unrestrained military and commercial rivalry and mounting political turmoil.”

The agenda of the Law of the Sea Conference covers the entire range of ocean uses. More than 140 nations are participating in these negotiations, representing a wide range of diverse interests, needs and problems.

The United States has important interests in these principal issues before the conference:

Breadth of territorial sea—the belt of ocean over which coastal states exercise sovereignty equivalent to that which they have on land. There is wide agreement on a territorial sea of 12 miles which the United States supports providing that unimpeded passage through international straits is also preserved.

Establishment of a 200-mile economic resource zone—an area in which coastal states can exercise jurisdiction over economic resources in the oceans beyond their territorial waters. The United States favors

such a zone including jurisdiction over coastal fisheries providing that such agreement protects other vital uses of these areas of the oceans such as navigation and scientific research and also assures access for taking fish which the coastal state is not able to take, consistent with conservation requirements.

Two-hundred-mile zones would encompass more than one-third of the world ocean, hence the importance of internationally agreed limitations on coastal state jurisdiction in these areas.

Establishment of an international system for exploitation of the resources of the deep seabeds—to insure that the vast hard mineral resources of the deep seabeds are mined in an equitable manner so as to avoid an unbridled race among nations to lay claim to broad areas of the virgin seas. The United States has a vital interest in assuring peaceful access to these minerals under widely acceptable rules.

Protection of the oceans from pollution—to insure the environmental integrity of the oceans for the benefit of all nations. This requires that international pollution standards apply over the widest areas of the oceans.

Encouraging the advancement and sharing of marine scientific research—while safeguarding the legitimate interests of coastal states in their economic resource zones.

It can be seen from the foregoing that the United States has enormous stakes in the Law of the Sea Conference and that many important American interests are involved, including the national defense establishment, the fishing industry, the mining industry, the scientific community, the shipping industry, the petroleum industry, and environmental interests. Not all countries share this broad range of interests; many would prefer to claim a 200-mile coastal zone in which coastal states would exercise a more extensive jurisdiction while also insuring continued maritime uses of the area. The negotiations are a delicate balancing act of wide-ranging and often conflicting interests perhaps unparalleled in diplomatic history.

While the slow progress of the Law of the Sea negotiations has been disappointing to many, nonetheless, progress is being made. A single negotiating text representing substantial agreement on important issues such as the territorial sea and the economic zone including fisheries has been completed. This text will be the focus of work at the next session of the Conference in New York during the spring of 1976. The major area of continuing disagreement concerns the nature of the international regime to govern the exploitation of deep seabed minerals. With respect to fisheries, there appears to be a consensus for a 200-mile economic resource zone, within which the coastal state would manage coastal fisheries but which would also permit foreign nations to fish in the zone if the coastal state does not harvest the yearly maximum sustainable yield. The present draft includes special provisions for salmon, which cannot be protected by unilateral legislation affecting coastal fisheries.

It is in this setting that H.R. 200 has been reported favorably by the Committee on Merchant Marine and Fisheries. The House of Representatives is being asked to assert a unilateral claim which would disrupt substantial numbers of existing fisheries agreements and also alter international conventions to which the United States is a party.

III. H.R. 200 WOULD DAMAGE U.S. OBJECTIVES AT THE LAW OF THE SEA CONFERENCE INCLUDING OUR EFFORTS TO OBTAIN SPECIAL REGIMES FOR SALMON AND FOR DISTANT-WATER FISHERIES SUCH AS TUNA AND SHRIMP

With respect to fisheries, the U.S. position at the Law of the Sea Conference is not only to assure coastal state jurisdiction over coastal species but also to enable special treatment for noncoastal species such as tuna and salmon which cannot be protected without international agreements. We also want to assure rights of access to the fisheries zones of other states. If other states followed the precedent of unilateral action, their fisheries, including tuna within their zones, could be closed to foreign fishing.

Furthermore, proponents of H.R. 200 minimize its effect on Law of the Sea negotiations by asserting that it deals only with fish resources of the oceans and does not interfere with negotiations concerning the other issues such as defense, environment, and seabed minerals. But this assertion ignores a basic fact of the Law of the Sea negotiations—that all of the issues are intertwined and that what one country is willing to concede on passage through straits, for example, may be dependent on what another country is willing to concede on fisheries or marine pollution. Proponents also note that the effective date of H.R. 200—July 1, 1976—allows time for the Conference to conclude its New York session. This, however, ignores the fact that the political impact of passage of H.R. 200 before the New York session begins will have adverse consequences on the negotiations regardless of the effective date of the legislation. The critical point is not the effective date of the legislation but the announced decision by the United States that it will act unilaterally to protect its ocean interest. This precedent will enable other nations to assert their own claims and thus eliminate the incentives to reach an agreement.

Moreover, because of the problems of enforcement of such unilateral claims, the bill is unlikely to achieve its stated purpose. There are other ways through bilateral and multilateral agreements to protect coastal fisheries on an interim basis pending a Law of the Sea Treaty.

IV. THERE ARE ALTERNATIVE MEANS OF ACHIEVING A TRANSITION TO A 200-MILE COASTAL FISHERIES ZONE BY INTERNATIONAL AGREEMENTS, NOT BY UNILATERAL ACTION

A comprehensive ocean treaty negotiated at the Law of the Sea Conference is a preferable alternative to H.R. 200, if it provides a reasonable balance of international and American interests, including fisheries. However, the executive branch has recognized the need to take effective interim measures to protect endangered stocks now. The President has approved the establishment of a 200-mile fisheries zone by negotiation but *not* by unilateral action. As Secretary of State Kissinger announced in his speech in Montreal, the United States is now beginning to negotiate interim agreements with nations fishing off our coasts as a transition to such a zone. Testimony before the committee stated that this plan will proceed irrespective of the timetable of the Law of the Sea Conference.

This plan seeks to establish an effective conservation regime; create preferential harvesting rights for U.S. fishermen; implement a system

for collection of fisheries data; introduce more effective enforcement procedures; and implement satisfactory arrangements to resolve conflicts and insure adequate compensation to U.S. fishermen in case of damage by foreign fishermen. Such a plan has the merit of having been *negotiated*, not imposed illegally by unilateral fiat. Its concerns are the same as those of beleaguered U.S. fishermen: conservation of steadily depleting coastal fish stocks and protection of U.S. fishing interests.

V. UNILATERAL ACTION WILL ADVERSELY AFFECT OTHER IMPORTANT U.S. FOREIGN POLICY INTERESTS

The proposed legislation will increase the potential for conflict around the world; first from our efforts to enforce this zone against other nations, and second, in the need to protect our own interests in more extreme zones that may be claimed by others.

The United States has consistently resisted, as a matter of principle, unilateral claims of other nations to jurisdiction over broad areas of the oceans. No major power has sought to make such claims, and other nations can be expected to resist ours. At the same time, nations with more limited interests will seize upon this precedent to claim their own more extreme zones which could cause interference with rights of navigation, commercial shipping routes, scientific and other important uses of the oceans. The trend toward ever-escalating claims which we seek to avoid through a new law of the sea agreement will increase.

While some other nations have made such 200-mile claims, these are not accepted under international law and do not have the same international impact as would such a step taken by the United States. The United States cannot by domestic legislation require other nations to limit their claims to those we assert in the bill. Such limitations can only be reached by agreement. Our example can encourage the development of law or can enormously accelerate international disorder on the oceans.

Decisions to enforce our own zone and to protect our rights elsewhere in the oceans will be an added element of instability and uncertainty in the fabric of our international relations, and particularly with nations such as Japan and the U.S.S.R.

VI. H.R. 200 WOULD PROVOKE RETALIATORY ACTION BY OTHER NATIONS

Observers at the Law of the Sea Conference have reported that several countries, such as Mexico, are stating intentions to assert unilateral claims of their own should the United States do so. Some of these claims may not be confined to fisheries, but could apply to other resources, to the detriment of other U.S. economic interests. The United States will then be faced with the additional problem of protecting its own nonresource interests in the zones claimed by other states.

The movement of oil to the United States could be the first U.S. interest prejudiced if coastal states claim unilateral pollution control jurisdiction or seek in other ways to control international shipping routes—most, if not all, of which are within 200 miles of coast lines.

VII. H.R. 200 IS UNENFORCEABLE

Section 2 of H.R. 200 requires that the U.S. fishing zone be extended unilaterally from 12 to 200 miles, effective July 1, 1976. Such a zone would apply to the 50 States, including Alaska and Hawaii, and all U.S. possessions, including Puerto Rico, Virgin Islands, Guam, and American Samoa. The extended zone would cover 2,222,000 square miles—an area more than two-thirds of the total land area of the United States.

The U.S. Coast Guard does not now have the capacity to enforce this legislation over the widely increased area that H.R. 200 would cover. An increase in the Coast Guard budget would be necessary to acquire the additional personnel and equipment. In a letter to Hon. Leonor Sullivan, chairman of the Committee on Merchant Marine and Fisheries, the Commandant of the Coast Guard, Admiral O. W. Silver, stated that “to acquire and operate these facilities will require a very substantial increase in our operating expense and acquisition, construction and improvement appropriations.” In addition, the Commerce Department would require substantial additional appropriations for its role in enforcement. The report of the Committee on Merchant Marine and Fisheries on H.R. 200 estimates an expense at \$55,866,000 for fiscal year 1976 and more than \$665 million by fiscal year 1981 will be required to implement the legislation. More extensive studies of the cost of enforcement should be made, however—including an estimate by the General Accounting Office—before funds are appropriated for this purpose.

More importantly, these figures are just for the cost of monitoring the zone in concentrated areas against states which do not resist our jurisdiction. The cost—not to mention the danger—has not—and probably cannot—be estimated for enforcing this zone against states which do not recognize our unilateral claims.

If conservation measures and enforcement procedures are arrived at by agreement, the cost—and the risk—is substantially lower.

The problem of enforcement is not only financial. As stated in part IV, the measure would require difficult decisions of enforcement against nations such as the U.S.S.R. affecting vital U.S. foreign policy interests.

VIII. H.R. 200 IS INCONSISTENT WITH LONGSTANDING U.S. POLICY

The United States has always resisted jurisdictional claims by other nations extending claims of exclusive fisheries jurisdiction beyond 12 miles. Both the executive branch and Congress have reacted sharply to the seizure of American fishing vessels off the coasts of South American countries which claim 200 miles. H.R. 200 would have the United States join a small company of the same nations whose unilateral claims it has been denouncing as illegal. The inconsistency of H.R. 200 is evident in its provision for application of the Fisherman's Protective Act when U.S. vessels are seized within 200 miles of foreign coasts. The United States cannot have it both ways. If there is no existing international law with regard to fisheries in the area of the 200-mile zone, as the bill claims, we can hardly argue that a claim to tuna such

as that made by Ecuador is contrary to existing international law. On the other hand, if we claim the right to exercise unilateral jurisdiction over a 200-mile area, we can hardly require other nations to permit access to our vessels in a similar zone claimed by them.

Moreover, the imposition of trade embargoes (section 203 of H.R. 200) against states that refuse to negotiate agreements to permit access to U.S. vessels, is contrary to our longstanding policy against automatic embargoes. These provisions could lead to economic retaliation and also could affect other U.S. interests which may be current at the time with the country concerned.

In short, we cannot deny to other states the right to make the same claims we make, and we can expect that such claims will be even more extensive.

IX. H.R. 200 VIOLATES U.S. TREATY OBLIGATIONS

The United States is a party to 11 bilateral and 6 multilateral fishing agreements. Foreign nations who are parties to treaties involving U.S. coastal fisheries have the juridical right under those treaties to conduct fishing operations pursuant to those agreements. H.R. 200 would treat foreign fishing interests, long established under international law, as purely a matter subject to domestic legislation. H.R. 200 requires the Secretary of State promptly to renegotiate all relevant treaties to conform with the terms of this U.S. domestic legislation (section 202). In effect, the bill directs the Secretary to negotiate changes in treaties that have been ratified with the advice and consent of the Senate. In any case, enforcement of H.R. 200, at the very outset, places the United States in clear violation of treaties to which it is a party and customary international law. For example, the United States has always protected its rights on the high seas beyond the territorial sea. High seas rights under existing international law include freedom of fishing beyond a 12-mile fishing zone except as modified by bilateral and other international agreements.

X. H.R. 200 IS NOT AN INTERIM MEASURE

Proponents of H.R. 200 claim that the bill is an interim measure which would be superseded by a comprehensive law of the sea treaty when the latter becomes effective.

However, under section 205 of the bill, the Secretary of Commerce, in consultation with the Secretary of State, is given *discretionary*—not mandatory—authority to promulgate changes in the legislation to conform with such a treaty. Thus, H.R. 200 does not contain any assurance that its provisions will be supplanted by a new multilateral convention on the law of the sea.

Moreover, the constitutionality of section 205 is questionable, since a treaty ratified with the advice and consent of the Senate becomes the supreme law of the land.

ADDITIONAL VIEWS OF HON. BENJAMIN A. GILMAN

I concur with the findings and conclusions of the House International Relations Committee's Special Oversight Report on H.R. 200, the Marine Fisheries Conservation Act of 1975.

Having been both a cosponsor of the 200-mile-limit legislation in the 93d session and thereafter having served, for the past year, as a Congressional Advisor to the Law of the Sea Conference, I have had an opportunity to fully review and weigh the effect that passage of this type of unilateral legislation would have upon our Nation's present and future international negotiations.

Essentially, the problem posed by H.R. 200 is that if this measure should be enacted into law, the United States would then, for the first time, exercise unilateral jurisdiction over areas of the oceans in which other nations presently exercise high seas rights.

John Norton Moore, Chairman of the National Security Council's Interagency Task Force on the Law of the Sea, in his testimony before the House International Relations Committee's Oversight Hearings on H.R. 200, succinctly stated the choice presented by this measure, noting that "how we decide this issue will largely determine whether we move forward to cooperative solutions to oceans problems or precipitate a spiral of unilateral claims leading inevitably to confrontation and conflict."

The United States has consistently opposed the exercise of such jurisdiction by other nations and has instead urged that any necessary modifications in existing international law, including coastal fisheries jurisdiction, be made by international agreement.

In his September 18, 1975 greetings to the special meeting of the International Commission for the Northwest Atlantic Fisheries, President Ford stated that "I am strongly opposed to unilateral claims by nations to jurisdiction on the high sea."

If we establish the precedent of unilateral action, other nations with more limited interests in the oceans can be expected to make more extensive claims of jurisdiction which could affect other U.S. interests, including both our national security and the prosperity of our distant water fisherman. It has been estimated that over 40 percent of the world's oceans are within 200 miles of some nation's coast, and that virtually the entire operating areas of the United States 6th and 7th Fleets lie within such waters.

Should H.R. 200 pass, we will also be faced with serious questions of enforcement both in terms of costs of that enforcement and relations with those nations fishing off our coasts, most notably Japan and the U.S.S.R. A conservative estimate for the first year cost of this legislation, not including the potential economic deficit due to a loss of distant water fisheries, would be approximately \$140 million over

present funding levels. Further, passage of this legislation could seriously increase the potential for conflict around the world.

Most of us agree that some action must be taken to improve the situation of our coastal fisheries and to ensure strong conservation and enforcement measures. I have long supported the need for a controlled economic zone extending outward from the territorial waters of the United States. But it is the considered judgment of those in the administration concerned with the Law of the Sea Conference that unilateral action such as contemplated by H.R. 200 will make difficult, if not impossible, our Nation's more important effort of securing an agreement on broader coastal state jurisdiction over economic resources, and to impose obligations on coastal states to permit foreign fishing for catch that cannot be taken by the coastal state consistent with internationally recognized conservation measures. Without such agreements, our distant water tuna and fishing fleets will be subject to the arbitrary exercise of jurisdiction by other coastal states, who could easily decide to deny our fleets access to their fisheries zones altogether.

It should also be noted that the United States has possible alternatives to pursue, aside from that of unilateral action and the dangerous precedent that would result from such action.

One alternative is to proceed with the Law of the Sea Conference (which will convene again in March, 1976, in New York) in an effort to obtain a comprehensive, acceptable multilateral agreement.

The administration has also announced that the State Department will soon enter into the renegotiation of 11 bilateral fisheries agreements and that 6 multilateral commissions are scheduled to convene next year for further negotiations.

That this type of phased negotiation can be successful was demonstrated by the success that U.S. proposals encountered last week at the meeting of the International Commission for the Northwest Atlantic Fisheries. This 17-member body, which includes principal major nations that fish off our Northeast and Middle Atlantic Coast, agreed to take positive action to reduce by more than 23 percent the 1976 overall catch quota for the Northwest Atlantic. The Commission also agreed to another U.S. proposal to close off on a year-round basis most of the St. Georges Bank in the North Atlantic to bottom trawling for valuable and depleted ground fish species.

These two acts in and of themselves should allow for the recovery of fish stocks off our coasts within a reasonable period of time.

It is also significant to note that while some other countries have attempted to unilaterally assert extensive jurisdiction, some as far as 200 miles, no major power with important ocean interests has sought to do so. As a leader in the Law of the Sea Conference, the U.S. must recognize that it cannot take unilateral action without full consideration of the consequences of such action.

Secretary of State Kissinger, speaking before the American Bar Association's annual convention in Montreal on August 11, 1975, stated:

The current negotiation may thus be the world's last chance.
Unilateral national claims to fishing zones and territorial seas

extending from fifty to two hundred miles have already resulted in seizures of fishing vessels and constant disputes over rights to ocean space. The breakdown of the current negotiation, a failure to reach a legal consensus, will lead to unrestrained military and commercial rivalry and mounting political turmoil . . .

The United States strongly believes that law must govern the oceans . . .

Many within Congress are urging us to solve this problem unilaterally. A bill to establish a 200-mile fishing zone passed the Senate last year; a new one is currently before the House.

The Administration shares the concern which has led to such proposals. But unilateral action is both extremely dangerous and incompatible with the thrust of the negotiations described here. The United States has consistently resisted the unilateral claims of other nations, and others almost certainly resist ours. Unilateral legislation on our part would almost surely prompt others to assert extreme claims of their own. Our ability to negotiate an acceptable international consensus on the economic zone will be jeopardized. If every state proclaims its own rules of law and seeks to impose them on others, the very basis of international law will be shaken, ultimately to our own detriment.

It is for these reasons that I join with the chairman and members of the House International Relations Committee in asking that H.R. 200 not be adopted at this time.

BENJAMIN A. GILMAN.

**MINORITY VIEWS OF HON. STEPHEN J. SOLARZ, HON.
DON BONKER AND HON. ROBERT J. LAGOMARSINO**

Traditional international law has held that all countries have equal rights to fish anywhere they desire on the high seas. This principle of freedom of fishing on the high seas was originally enunciated by Hugo Grotius in 1608. For some three and a half centuries following the enunciation of this axiom, nations took as much fish as they wanted from the world's oceans, seas, lakes, rivers and streams with little or no concern for the future. Fish were considered to be the common property of all and no attempts were made to conserve this rich natural resource. However, the basis of Grotius' principle, that the seas' resources are limitless, has proven to be invalid. Modern fishing techniques, an increase in world fishing activity, a significant rise in the world's population and the increasing demand for fish have all resulted in a situation whereby we are confronted with a serious depletion of fish supplies and the extinction of many species.

It is the attack on American fisheries near our coasts, beginning in the early 1960's, and which has now reached a crisis stage, which has precipitated the need for legislation such as H.R. 200. There seems to be little question that the three-mile and twelve-mile limits are no longer valid. In the absence of any positive initiatives by the U.N. or other international bodies, action must be taken by our own nation to further extend U.S. jurisdiction over fish and marine life in our territorial waters and contiguous fishery zones, even on an interim basis. Frankly, if effective conservation and management of increasingly scarce fish populations are not promptly initiated, the world will be confronted by the loss of one of its most valuable sources of protein-rich food.

For the past several years the United States has attempted to protect scarce fish stocks through multilateral and bilateral fisheries agreements. Unfortunately, this tact has not been successful. The decimation of our coastal fish stocks by foreign fleets continues and has aroused the serious concern of conservationists and others who oppose the continuing destruction of our important marine life food resources. One can cite statistic after statistic showing a sharp decline in the U.S. fishing industry and a serious depletion in the number of various stocks of fish. Last year a Senate committee report observed that "Huge foreign fishing fleets which use 'factory' fishing methods are often subsidized by foreign governments and have forced U.S. fishermen to greatly increase their efforts merely to retain a steadily diminishing share of the total fishing catch off U.S. coasts."

In late 1973, the Congress voiced its concern by passing S. Con. Res. 11, unanimously adopted by the House, which states that "it is the policy of the Congress that our fishing industry be afforded all support necessary to have it strengthened, and all steps be taken to provide adequate protection for our coastal fisheries against excessive foreign

fishing, and further that the Congress is fully prepared to act immediately to provide interim measures to conserve overfished stocks and to protect our domestic fishing industry."

Although one might prefer that the exercise of effective U.S. fisheries conservation jurisdiction be achieved in accordance with a comprehensive Law of the Sea Treaty, the Congress has been most patient while foreign fleets have continued their destructive overfishing of our coastal stocks. As yet, the Law of the Sea Conference has failed to meet the September 1975 deadline, established by the U.N. General Assembly, to conclude negotiations. Few observers of the Conference believe there is any hope for the conclusion of a treaty in 1976. At the oversight hearing conducted by the International Relations Committee on September 24, 1975, Under Secretary of State Carlyle E. Maw, Chief of the U.S. Delegation to the Third U.N. Law of the Sea Conference, declared that he was unable to even predict that the conference would conclude the negotiations within 3 or 5 years. If we are to wait that long for truly substantive fish conservation and management authority, the continuing foreign overfishing will have destroyed the fish and the Congress will be guilty of idly standing by while this vital world food source is quickly depleted.

Probably the most controversial feature of H.R. 200 is its provision for extending U.S. fisheries conservation and management jurisdiction to 200 miles from our coast, effective July 1, 1976. However, the legislation also creates a structure of regional fisheries management councils empowered with responsibility for adopting conservation and management plans for each depleted or threatened species of fish. The regional councils created at once after the bill's enactment, and the adoption of conservation rules applying to both American and foreign fishing, would be implemented well before the July 1, 1976 extension of U.S. fisheries jurisdiction under the measure.

The United States is a party to almost two dozen international fishing agreements. There seems to be little question, however, that these treaties are virtually worthless as nearly all of the stocks of fish which are either depleted or faced with depletion are the subject of these various multinational and bilateral agreements. Tragically, international agreements have failed to provide meaningful or effective protection for fish stocks and have not succeeded in governing proper fishing techniques.

It must be understood, however, that H.R. 200 does *not* abrogate or violate U.S. obligations under these existing treaties. The legislation specifically indicates that these treaties will continue to be honored until their legal termination or renegotiation. The bill does instruct the Secretary of State to attempt to renegotiate expiring bilateral fisheries agreements and existing multilateral fisheries agreements to bring them into conformity with the policies and provisions of the bill. Inclusion of these instructions in the legislation merely transforms into statutory requirement the negotiating efforts the State Department has been attempting for some 2 years, and to which the Department recently reaffirmed its commitment. Extant fisheries treaties and agreements would continue to be honored until this renegotiation has been completed.

Some maintain that passage of H.R. 200 would jeopardize the rights of U.S. tuna and shrimp fishermen who fish close to other nations, and would jeopardize effective conservation of American salmon stocks. Such conclusions are not justified by a reading of the bill. Tuna is specifically excluded from the U.S. fisheries jurisdiction extension as tuna are biologically different from other types of fish and range throughout large areas of the oceans. A number of sections of the bill reaffirm the intent of the Congress that tuna continue to be regulated solely by international organizations and not by national jurisdiction claims. Section 204, in particular, instructs the Secretary of State to attempt, through negotiation to make existing international regulation of tuna more effective. Section 203 instructs the Secretary to negotiate with nations off whose shores U.S. tuna and shrimp vessels fish with a view toward securing continued agreement to the presence of American fishing vessels off their shores.

Section 201(k) of H.R. 200 implements Article 7 of the International Convention on Fishing and Conservation of the Living Resources of the High Seas, providing for U.S. management of the salmon and other anadromous fish which spawn in our freshwater rivers. Thus, the legislation uses existing international law to provide the protection required by this third biological type of fish.

Contrary to the views of some, the United States has long led in establishing international law in relation to fisheries. It has previously taken unilateral actions in this regard. President Truman's unilateral proclamation, in 1945, that the United States would exercise jurisdiction over the living and mineral resources on and under the Continental Shelf was not codified into international law until the 1958 Law of the Sea Conference. The extension of U.S. fisheries jurisdiction by the Congress from 3 to 12 miles off our shores in 1966 was also a unilateral action and is still unrecognized in codified international law. It should be noted that the U.S. arrests foreign fishing vessels violating the 12-mile fisheries jurisdiction and such arrests cannot be considered to have led to international confrontations. The present trend in international law—exemplified by the almost universal acceptance by countries at the Law of the Sea Conference—is toward a 200-mile economic or fishing zone for coastal states. At present 13 nations observe a 200-mile limit and a total of 40 countries have extended their fishing jurisdictions beyond the traditional limit of 12 nautical miles. The enactment of H.R. 200 would not reverse the U.S. long-standing policy. Rather, it would continue its tradition of recognizing trends in international law regarding conservation and management of fisheries resources, and of acting in accordance with those trends to protect the sea's living resources.

H.R. 200 is explicitly an interim measure which applies only until the Law of the Sea Conference can complete an acceptable treaty. It is also an emergency measure which would result in swift action being taken to protect and conserve U.S. coastal fishery stocks and maintain a visible fishing industry along America's coastline.

It is my understanding that the Law of the Sea Conference is in basic agreement on the fisheries provision of a treaty but that the current stalemate pertains to deep-sea mining and certain other issues.

At this time one cannot predict when or if the Conference will actually complete an acceptable treaty. Even if such a treaty had already been concluded, it would be another five or ten years before a sufficient number of nations had ratified it to cause it to become fully effective. Frankly, enactment of H.R. 200—which is consistent with the Conference's concensus on fisheries jurisdiction—might very well provide the needed stimulus toward the completion of negotiations on the other issues. In any event it is critical that the United States take interim action at this time to prevent the destruction of our coastal fisheries. Such a move, in my view, would be consistent with the developing principles of international law. Further, it would neither weaken our future negotiating position nor strain the country's military resources to effectively enforce a 200-mile limit. Thus, we cannot delay further and H.R. 200 warrants favorable consideration and passage.

STEPHEN J. SOLARZ,
DON BONKER,
ROBERT J. LAGOMARSINO.



Ninety-fourth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the nineteenth day of January,
one thousand nine hundred and seventy-six*

An Act

To provide for the conservation and management of the fisheries, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act, with the following table of contents, may be cited as the "Fishery Conservation and Management Act of 1976".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

Sec. 101. Fishery conservation zone.
Sec. 102. Exclusive fishery management authority.
Sec. 103. Highly migratory species.
Sec. 104. Effective date.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

Sec. 201. Foreign fishing.
Sec. 202. International fishery agreements.
Sec. 203. Congressional oversight of governing international fishery agreements.
Sec. 204. Permits for foreign fishing.
Sec. 205. Import prohibitions.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

Sec. 301. National standards for fishery conservation and management.
Sec. 302. Regional fishery management councils.
Sec. 303. Contents of fishery management plans.
Sec. 304. Action by the Secretary.
Sec. 305. Implementation of fishery management plans.
Sec. 306. State jurisdiction.
Sec. 307. Prohibited acts.
Sec. 308. Civil penalties.
Sec. 309. Criminal offenses.
Sec. 310. Civil forfeitures.
Sec. 311. Enforcement.
Sec. 312. Effective date of certain provisions.

TITLE IV—MISCELLANEOUS PROVISIONS

Sec. 401. Effect of law of the sea treaty.
Sec. 402. Repeals.
Sec. 403. Fishermen's Protective Act amendments.
Sec. 404. Marine Mammal Protection Act amendment.
Sec. 405. Atlantic Tunas Convention Act amendment.
Sec. 406. Authorization of appropriations.

SEC. 2. FINDINGS, PURPOSES AND POLICY

- (a) FINDINGS.—The Congress finds and declares the following:
- (1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and the anadromous species which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources.

These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

(2) As a consequence of increased fishing pressure and because of the inadequacy of fishery conservation and management practices and controls (A) certain stocks of such fish have been overfished to the point where their survival is threatened, and (B) other such stocks have been so substantially reduced in number that they could become similarly threatened.

(3) Commercial and recreational fishing constitutes a major source of employment and contributes significantly to the economy of the Nation. Many coastal areas are dependent upon fishing and related activities, and their economies have been badly damaged by the overfishing of fishery resources at an ever-increasing rate over the past decade. The activities of massive foreign fishing fleets in waters adjacent to such coastal areas have contributed to such damage, interfered with domestic fishing efforts, and caused destruction of the fishing gear of United States fishermen.

(4) International fishery agreements have not been effective in preventing or terminating the overfishing of these valuable fishery resources. There is danger that irreversible effects from overfishing will take place before an effective international agreement on fishery management jurisdiction can be negotiated, signed, ratified, and implemented.

(5) Fishery resources are finite but renewable. If placed under sound management before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, and to realize the full potential of the Nation's fishery resources.

(7) A national program for the development of fisheries which are underutilized or not utilized by United States fishermen, including bottom fish off Alaska, is necessary to assure that our citizens benefit from the employment, food supply, and revenue which could be generated thereby.

(b) PURPOSES.—It is therefore declared to be the purposes of the Congress in this Act—

(1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;

(2) to support and encourage the implementation and enforcement of international fishery agreements for the conservation and management of highly migratory species, and to encourage the negotiation and implementation of additional such agreements as necessary;

(3) to promote domestic commercial and recreational fishing under sound conservation and management principles;

(4) to provide for the preparation and implementation, in accordance with national standards, of fishery management plans

which will achieve and maintain, on a continuing basis, the optimum yield from each fishery;

(5) to establish Regional Fishery Management Councils to prepare, monitor, and revise such plans under circumstances (A) which will enable the States, the fishing industry, consumer and environmental organizations, and other interested persons to participate in, and advise on, the establishment and administration of such plans, and (B) which take into account the social and economic needs of the States; and

(6) to encourage the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom fish off Alaska.

(c) **POLICY.**—It is further declared to be the policy of the Congress in this Act—

(1) to maintain without change the existing territorial or other ocean jurisdiction of the United States for all purposes other than the conservation and management of fishery resources, as provided for in this Act;

(2) to authorize no impediment to, or interference with, recognized legitimate uses of the high seas, except as necessary for the conservation and management of fishery resources, as provided for in this Act;

(3) to assure that the national fishery conservation and management program utilizes, and is based upon, the best scientific information available; involves, and is responsive to the needs of, interested and affected States and citizens; promotes efficiency; draws upon Federal, State, and academic capabilities in carrying out research, administration, management, and enforcement; and is workable and effective;

(4) to permit foreign fishing consistent with the provisions of this Act; and

(5) to support and encourage continued active United States efforts to obtain an internationally acceptable treaty, at the Third United Nations Conference on the Law of the Sea, which provides for effective conservation and management of fishery resources.

SEC. 3. DEFINITIONS.

As used in this Act, unless the context otherwise requires—

(1) The term “anadromous species” means species of fish which spawn in fresh or estuarine waters of the United States and which migrate to ocean waters.

(2) The term “conservation and management” refers to all of the rules, regulations, conditions, methods, and other measures (A) which are required to rebuild, restore, or maintain, and which are useful in rebuilding, restoring, or maintaining, any fishery resource and the marine environment; and (B) which are designed to assure that—

(i) a supply of food and other products may be taken, and that recreational benefits may be obtained, on a continuing basis;

(ii) irreversible or long-term adverse effects on fishery resources and the marine environment are avoided; and

(iii) there will be a multiplicity of options available with respect to future uses of these resources.

(3) The term “Continental Shelf” means the seabed and subsoil of the submarine areas adjacent to the coast, but outside the area of the territorial sea, of the United States, to a depth of 200 meters or, beyond that limit, to where the depth of the super-

H. R. 200—4

adjacent waters admits of the exploitation of the natural resources of such areas.

(4) The term "Continental Shelf fishery resources" means the following:

COLEENTERATA

Bamboo Coral—*Acanella* spp.;
Black Coral—*Antipathes* spp.;
Gold Coral—*Callogorgia* spp.;
Precious Red Coral—*Corallium* spp.;
Bamboo Coral—*Keratoisis* spp.; and
Gold Coral—*Parazoanthus* spp.

CRUSTACEA

Tanner Crab—*Chionoecetes tanneri*;
Tanner Crab—*Chionoecetes opilio*;
Tanner Crab—*Chionoecetes angulatus*;
Tanner Crab—*Chionoecetes bairdi*;
King Crab—*Paralithodes camtschatica*;
King Crab—*Paralithodes platypus*;
King Crab—*Paralithodes brevipes*;
Lobster—*Homarus americanus*;
Dungeness Crab—*Cancer magister*;
California King Crab—*Paralithodes californiensis*;
California King Crab—*Paralithodes rathbuni*;
Golden King Crab—*Lithodes aequispinus*;
Northern Stone Crab—*Lithodes maja*;
Stone Crab—*Menippe mercenaria*; and
Deep-sea Red Crab—*Geryon quinquedens*.

MOLLUSKS

Red Abalone—*Haliotis rufescens*;
Pink Abalone—*Haliotis corrugata*;
Japanese Abalone—*Haliotis kamtschatkana*;
Queen Conch—*Strombus gigas*;
Surf Clam—*Spisula solidissima*; and
Ocean Quahog—*Artica islandica*.

SPONGES

Glove Sponge—*Hippiospongia canaliculata*;
Sheepswool Sponge—*Hippiospongia lachne*;
Grass Sponge—*Spongia graminea*; and
Yellow Sponge—*Spongia barbera*.

If the Secretary determines, after consultation with the Secretary of State, that living organisms of any other sedentary species are, at the harvestable stage, either—

(A) immobile on or under the seabed, or

(B) unable to move except in constant physical contact with the seabed or subsoil,

of the Continental Shelf which appertains to the United States, and publishes notice of such determination in the Federal Register, such sedentary species shall be considered to be added to the foregoing list and included in such term for purposes of this Act.

(5) The term "Council" means any Regional Fishery Management Council established under section 302.

(6) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, birds, and highly migratory species.

(7) The term "fishery" means—

(A) one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics; and

(B) any fishing for such stocks.

(8) The term "fishery conservation zone" means the fishery conservation zone established by section 101.

(9) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(10) The term "fishing" means—

(A) the catching, taking, or harvesting of fish;

(B) the attempted catching, taking, or harvesting of fish;

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

(D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C).

Such term does not include any scientific research activity which is conducted by a scientific research vessel.

(11) The term "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—

(A) fishing; or

(B) 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, storage, refrigeration, transportation, or processing.

(12) The term "foreign fishing" means fishing by a vessel other than a vessel of the United States.

(13) The term "high seas" means all waters beyond the territorial sea of the United States and beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States.

(14) The term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

(15) The term "international fishery agreement" means any bilateral or multilateral treaty, convention, or agreement which relates to fishing and to which the United States is a party.

(16) The term "Marine Fisheries Commission" means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(17) The term "national standards" means the national standards for fishery conservation and management set forth in section 301.

(18) The term "optimum", with respect to the yield from a fishery, means the amount of fish—

(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, or ecological factor.

(19) The term "person" means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(20) The term "Secretary" means the Secretary of Commerce or his designee.

(21) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

(22) The term "stock of fish" means a species, subspecies, geographical grouping, or other category of fish capable of management as a unit.

(23) The term "treaty" means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(24) The term "United States", when used in a geographical context, means all the States thereof.

(25) The term "vessel of the United States" means any vessel documented under the laws of the United States or registered under the laws of any State.

TITLE I—FISHERY MANAGEMENT AUTHORITY OF THE UNITED STATES

SEC. 101. FISHERY CONSERVATION ZONE.

There is established a zone contiguous to the territorial sea of the United States to be known as the fishery conservation zone. The inner boundary of the fishery conservation zone is a line coterminous with the seaward boundary of each of the coastal States, and the outer boundary of such zone is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.

SEC. 102. EXCLUSIVE FISHERY MANAGEMENT AUTHORITY

The United States shall exercise exclusive fishery management authority, in the manner provided for in this Act, over the following:

(1) All fish within the fishery conservation zone.

(2) All anadromous species throughout the migratory range of each such species beyond the fishery conservation zone; except that such management authority shall not extend to such species during the time they are found within any foreign nation's territorial sea or fishery conservation zone (or the equivalent), to the extent that such sea or zone is recognized by the United States.

(3) All Continental Shelf fishery resources beyond the fishery conservation zone.

SEC. 103. HIGHLY MIGRATORY SPECIES.

The exclusive fishery management authority of the United States shall not include, nor shall it be construed to extend to, highly migratory species of fish.

SEC. 104. EFFECTIVE DATE.

This title shall take effect March 1, 1977.

TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

SEC. 201. FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless such foreign fishing—

- (1) is authorized under subsection (b) or (c);
- (2) is not prohibited by subsection (f); and
- (3) is conducted under, and in accordance with, a valid and applicable permit issued pursuant to section 204.

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

- (1) was in effect on the date of enactment of this Act; and
- (2) has not expired, been renegotiated, or otherwise ceased to be of force and effect with respect to the United States.

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

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

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

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

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

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

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

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

(C) transponders, or such other appropriate position-fixing and identification equipment as the Secretary of the department in which the Coast Guard is operating determines

to be appropriate, be installed and maintained in working order on each such vessel;

(D) duly authorized United States observers be permitted on board any such vessel and that the United States be reimbursed for the cost of such observers;

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

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

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

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

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

(4) The foreign nation will—

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

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

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

(d) **TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING.**—The total allowable level of foreign fishing, if any, with respect to any fishery subject to the exclusive fishery management authority of the United States, shall be that portion of the optimum yield of such fishery which will not be harvested by vessels of the United States, as determined in accordance with the provisions of this Act.

(e) **ALLOCATION OF ALLOWABLE LEVEL.**—The Secretary of State, in cooperation with the Secretary, shall determine the allocation among foreign nations of the total allowable level of foreign fishing which is permitted with respect to any fishery subject to the exclusive fishery management authority of the United States. In making any such determination, the Secretary of State and the Secretary shall consider—

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

(2) whether such nations have cooperated with the United States in, and made substantial contributions to, fishery research and the identification of fishery resources;

(3) whether such nations have cooperated with the United States in enforcement and with respect to the conservation and management of fishery resources; and

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

(f) **RECIPROCITY.**—Foreign fishing shall not be authorized for the fishing vessels of any foreign nation unless such nation satisfies the

Secretary and the Secretary of State that such nation extends substantially the same fishing privileges to fishing vessels of the United States, if any, as the United States extends to foreign fishing vessels.

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

(1) shall contain a preliminary description of the fishery and a preliminary determination as to the optimum yield from such fishery and the total allowable level of foreign fishing with respect to such fishery;

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

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

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

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

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

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

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

SEC. 202. INTERNATIONAL FISHERY AGREEMENTS.

(a) **NEGOTIATIONS.**—The Secretary of State—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 203. CONGRESSIONAL OVERSIGHT OF GOVERNING INTERNATIONAL FISHERY AGREEMENTS.

(a) **IN GENERAL.**—No governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international fishery agreement. A copy of the document shall be delivered to each House of Congress on the same day and shall be delivered to the Clerk of the House of Representatives, if the House is not in session, and to the Secretary of the Senate, if the Senate is not in session.

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

(c) COMPUTATION OF 60-DAY PERIOD.—For purposes of subsection (a)—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.

(d) CONGRESSIONAL PROCEDURES.—

(1) RULES OF THE HOUSE OF REPRESENTATIVES AND SENATE.—The provisions of this section are enacted by the Congress—

(A) as an exercise of the rulemaking power of the House of Representatives and the Senate, respectively, and they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of fishery agreement resolutions described in paragraph (2), and they supersede other rules only to the extent that they are inconsistent therewith; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, and in the same manner and to the same extent as in the case of any other rule of that House.

(2) DEFINITION.—For purposes of this subsection, the term “fishery agreement resolution” refers to a joint resolution of either House of Congress—

(A) the effect of which is to prohibit the entering into force and effect of any governing international fishery agreement the text of which is transmitted to the Congress pursuant to subsection (a); and

(B) which is reported from the Committee on Merchant Marine and Fisheries of the House of Representatives or the Committee on Commerce or the Committee on Foreign Relations of the Senate, not later than 45 days after the date on which the document described in subsection (a) relating to that agreement is transmitted to the Congress.

(3) PLACEMENT ON CALENDAR.—Any fishery agreement resolution upon being reported shall immediately be placed on the appropriate calendar.

(4) FLOOR CONSIDERATION IN THE HOUSE.—

(A) A motion in the House of Representatives to proceed to the consideration of any fishery agreement resolution shall be highly privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the House of Representatives on any fishery agreement resolution shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing the resolution. A motion further to limit debate shall not be debatable. It shall not be in order to move to recommit any fishery agreement resolution or to move to reconsider the vote by which any fishery agreement resolution is agreed to or disagreed to.

(C) Motions to postpone, made in the House of Representatives with respect to the consideration of any fishery agreement resolution, and motions to proceed to the consideration of other business, shall be decided without debate.

(D) All appeals from the decisions of the Chair relating to the application of the Rules of the House of Representatives to the procedure relating to any fishery agreement resolution shall be decided without debate.

(E) Except to the extent specifically provided in the preceding provisions of this subsection, consideration of any fishery agreement resolution shall be governed by the Rules of the House of Representatives applicable to other bills and resolutions in similar circumstances.

(5) FLOOR CONSIDERATION IN THE SENATE.—

(A) A motion in the Senate to proceed to the consideration of any fishery agreement resolution shall be privileged and not debatable. An amendment to the motion shall not be in order, nor shall it be in order to move to reconsider the vote by which the motion is agreed to or disagreed to.

(B) Debate in the Senate on any fishery agreement resolution and on all debatable motions and appeals in connection therewith shall be limited to not more than 10 hours. The time shall be equally divided between, and controlled by, the majority leader and the minority leader or their designees.

(C) Debate in the Senate on any debatable motion or appeal in connection with any fishery agreement resolution shall be limited to not more than 1 hour, to be equally divided between, and controlled by, the mover of the motion or appeal and the manager of the resolution, except that if the manager of the resolution is in favor of any such motion or appeal, the time in opposition thereto shall be controlled by the minority leader or his designee. The majority leader and the minority leader, or either of them, may allot additional time to any Senator during the consideration of any debatable motion or appeal, from time under their control with respect to the applicable fishery agreement resolution.

(D) A motion in the Senate to further limit debate is not debatable. A motion to recommit any fishery agreement resolution is not in order.

SEC. 204. PERMITS FOR FOREIGN FISHING.

(a) IN GENERAL.—After February 28, 1977, no foreign fishing vessel shall engage in fishing within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone, unless such vessel has on board a valid permit issued under this section for such vessel.

(b) APPLICATIONS AND PERMITS UNDER GOVERNING INTERNATIONAL FISHERY AGREEMENTS.—

(1) ELIGIBILITY.—Each foreign nation with which the United States has entered into a governing international fishery agreement shall submit an application to the Secretary of State each year for a permit for each of its fishing vessels that wishes to engage in fishing described in subsection (a).

(2) FORMS.—The Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall prescribe the forms for permit applications submitted under this subsection and for permits issued pursuant to any such application.

(3) CONTENTS.—Any application made under this subsection shall specify—

(A) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner thereof;

(B) the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other pertinent information with respect to characteristics of each such vessel as the Secretary may require;

(C) each fishery in which each such vessel wishes to fish;

(D) the amount of fish or tonnage of catch contemplated for each such vessel during the time such permit is in force; and

(E) the ocean area in which, and the season or period during which, such fishing will be conducted;

and shall include any other pertinent information and material which the Secretary may require.

(4) TRANSMITTAL FOR ACTION.—Upon receipt of any application which complies with the requirements of paragraph (3), the Secretary of State shall publish such application in the Federal Register and shall promptly transmit—

(A) such application, together with his comments and recommendations thereon, to the Secretary;

(B) a copy of the application to each appropriate Council and to the Secretary of the department in which the Coast Guard is operating; and

(C) a copy of such material to the Committee on Merchant Marine and Fisheries of the House of Representatives and to the Committees on Commerce and Foreign Relations of the Senate.

(5) ACTION BY COUNCIL.—After receipt of an application transmitted under paragraph (4)(B), each appropriate Council shall prepare and submit to the Secretary such written comments on the application as it deems appropriate. Such comments shall be submitted within 45 days after the date on which the application is received by the Council and may include recommendations with respect to approval of the application and, if approval is recommended, with respect to appropriate conditions and restrictions thereon. Any interested person may submit comments to such Council with respect to any such application. The Council shall consider any such comments in formulating its submission to the Secretary.

(6) APPROVAL.—After receipt of any application transmitted under paragraph (4)(A), the Secretary shall consult with the Secretary of State and, with respect to enforcement, with the Secretary of the department in which the Coast Guard is operating. The Secretary, after taking into consideration the views and recommendations of such Secretaries, and any comments submitted by any Council under paragraph (5), may approve the application, if he determines that the fishing described in the application will meet the requirements of this Act.

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.—The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and the regulations promulgated to implement any such plan.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c) (1), (2), and (3).

(D) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

(8) NOTICE OF APPROVAL.—The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to—

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating;

(C) any Council which has authority over any fishery specified in such application; and

(D) the Committee on Merchant Marine and Fisheries of the House of Representatives and the Committees on Commerce and Foreign Relations of the Senate.

(9) DISAPPROVAL OF APPLICATIONS.—If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

(10) FEES.—Reasonable fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit is issued pursuant to this subsection. The Secretary, in consultation with the Secretary of State, shall establish and publish a schedule of such fees, which shall apply nondiscriminatorily to each foreign nation. In determining the level of such fees, the Secretary may take into account the cost of carrying out the provisions of this Act with respect to foreign fishing, including, but not limited to, the cost of fishery conservation and management, fisheries research, administration, and enforcement.

(11) ISSUANCE OF PERMITS.—If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(12) SANCTIONS.—If any foreign fishing vessel for which a permit has been issued pursuant to this subsection has been used in the commission of any act prohibited by section 307 the Secretary may, or if any civil penalty imposed under section 308 or any criminal fine imposed under section 309 has not been paid and is overdue the Secretary shall—

(A) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year;

(B) suspend such permit for the period of time deemed appropriate; or

(C) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application.

Any permit which is suspended under this paragraph for non-payment of a civil penalty shall be reinstated by the Secretary upon the payment of such civil penalty together with interest thereon at the prevailing rate.

(c) **REGISTRATION PERMITS.**—The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201 (b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

SEC. 205. IMPORT PROHIBITIONS.

(a) **DETERMINATIONS BY SECRETARY OF STATE.**—If the Secretary of State determines that—

(1) he has been unable, within a reasonable period of time, to conclude with any foreign nation an international fishery agreement allowing fishing vessels of the United States equitable access to fisheries over which that nation asserts exclusive fishery management authority, as recognized by the United States, in accordance with traditional fishing activities of such vessels, if any, and under terms not more restrictive than those established under sections 201 (c) and (d) and 204 (b) (7) and (10), because such nation has (A) refused to commence negotiations, or (B) failed to negotiate in good faith;

(2) any foreign nation is not allowing fishing vessels of the United States to engage in fishing for highly migratory species in accordance with an applicable international fishery agreement, whether or not such nation is a party thereto;

(3) any foreign nation is not complying with its obligations under any existing international fishery agreement concerning fishing by fishing vessels of the United States in any fishery over which that nation asserts exclusive fishery management authority; or

(4) any fishing vessel of the United States, while fishing in waters beyond any foreign nation's territorial sea, to the extent that such sea is recognized by the United States, is seized by any foreign nation—

- (A) in violation of an applicable international fishery agreement;
- (B) without authorization under an agreement between the United States and such nation; or
- (C) as a consequence of a claim of jurisdiction which is not recognized by the United States;
- he shall certify such determination to the Secretary of the Treasury.
- (b) PROHIBITIONS.—Upon receipt of any certification from the Secretary of State under subsection (a), the Secretary of the Treasury shall immediately take such action as may be necessary and appropriate to prohibit the importation into the United States—
- (1) of all fish and fish products from the fishery involved, if any; and
 - (2) upon recommendation of the Secretary of State, such other fish or fish products, from any fishery of the foreign nation concerned, which the Secretary of State finds to be appropriate to carry out the purposes of this section.
- (c) REMOVAL OF PROHIBITION.—If the Secretary of State finds that the reasons for the imposition of any import prohibition under this section no longer prevail, the Secretary of State shall notify the Secretary of the Treasury, who shall promptly remove such import prohibition.
- (d) DEFINITIONS.—As used in this section—
- (1) The term “fish” includes any highly migratory species.
 - (2) The term “fish products” means any article which is produced from or composed of (in whole or in part) any fish.

TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT.

- (a) IN GENERAL.—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:
- (1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.
 - (2) Conservation and management measures shall be based upon the best scientific information available.
 - (3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.
 - (4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.
 - (5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) GUIDELINES.—The Secretary shall establish guidelines, based on the national standards, to assist in the development of fishery management plans.

SEC. 302. REGIONAL FISHERY MANAGEMENT COUNCILS.

(a) ESTABLISHMENT.—There shall be established, within 120 days after the date of the enactment of this Act, eight Regional Fishery Management Councils, as follows:

(1) NEW ENGLAND COUNCIL.—The New England Fishery Management Council shall consist of the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The New England Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(2) MID-ATLANTIC COUNCIL.—The Mid-Atlantic Fishery Management Council shall consist of the States of New York, New Jersey, Delaware, Pennsylvania, Maryland, and Virginia and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The Mid-Atlantic Council shall have 19 voting members, including 12 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(3) SOUTH ATLANTIC COUNCIL.—The South Atlantic Fishery Management Council shall consist of the States of North Carolina, South Carolina, Georgia, and Florida and shall have authority over the fisheries in the Atlantic Ocean seaward of such States. The South Atlantic Council shall have 13 voting members, including 8 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(4) CARIBBEAN COUNCIL.—The Caribbean Fishery Management Council shall consist of the Virgin Islands and the Commonwealth of Puerto Rico and shall have authority over the fisheries in the Caribbean Sea and Atlantic Ocean seaward of such States. The Caribbean Council shall have 7 voting members, including 4 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(5) GULF COUNCIL.—The Gulf of Mexico Fishery Management Council shall consist of the States of Texas, Louisiana, Mississippi, Alabama, and Florida and shall have authority over the fisheries in the Gulf of Mexico seaward of such States. The Gulf Council shall have 17 voting members, including 11 appointed by the Secretary pursuant to subsection (b) (1) (C) (at least one of whom shall be appointed from each such State).

(6) PACIFIC COUNCIL.—The Pacific Fishery Management Council shall consist of the States of California, Oregon, Washington, and Idaho and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Pacific Council shall have 13 voting members, including 8 appointed by the

Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

(7) **NORTH PACIFIC COUNCIL.**—The North Pacific Fishery Management Council shall consist of the States of Alaska, Washington, and Oregon and shall have authority over the fisheries in the Arctic Ocean, Bering Sea, and Pacific Ocean seaward of Alaska. The North Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (5 of whom shall be appointed from the State of Alaska and 2 of whom shall be appointed from the State of Washington).

(8) **WESTERN PACIFIC COUNCIL.**—The Western Pacific Fishery Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(1)(C) (at least one of whom shall be appointed from each such State).

Each Council shall reflect the expertise and interest of the several constituent States in the ocean area over which such Council is granted authority.

(b) **VOTING MEMBERS.**—(1) The voting members of each Council shall be:

(A) The principal State official with marine fishery management responsibility and expertise in each constituent State, who is designated as such by the Governor of the State, so long as the official continues to hold such position, or the designee of such official.

(B) The regional director of the National Marine Fisheries Service for the geographic area concerned, or his designee, except that if two such directors are within such geographical area, the Secretary shall designate which of such directors shall be the voting member.

(C) The members required to be appointed by the Secretary shall be appointed by the Secretary from a list of qualified individuals submitted by the Governor of each applicable constituent State. With respect to the initial such appointments, such Governors shall submit such lists to the Secretary as soon as practicable, not later than 45 days after the date of the enactment of this Act. As used in this subparagraph, (i) the term “list of qualified individuals” shall include the names (including pertinent biographical data) of not less than three such individuals for each applicable vacancy, and (ii) the term “qualified individual” means an individual who is knowledgeable or experienced with regard to the management, conservation, or recreational or commercial harvest, of the fishery resources of the geographical area concerned.

(2) Each voting member appointed to a Council pursuant to paragraph (1)(C) shall serve for a term of 3 years; except that, with respect to the members initially so appointed, the Secretary shall designate up to one-third thereof to serve for a term of 1 year, up to one-third thereof to serve for a term of 2 years, and the remaining such members to serve for a term of 3 years.

(3) Successors to the voting members of any Council shall be appointed in the same manner as the original voting members. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

(c) NONVOTING MEMBERS.—(1) The nonvoting members of each Council shall be:

(A) The regional or area director of the United States Fish and Wildlife Service for the geographical area concerned, or his designee.

(B) The commander of the Coast Guard district for the geographical area concerned, or his designee; except that, if two Coast Guard districts are within such geographical area, the commander designated for such purpose by the commandant of the Coast Guard.

(C) The executive director of the Marine Fisheries Commission for the geographical area concerned, if any, or his designee.

(D) One representative of the Department of State designated for such purpose by the Secretary of State, or his designee.

(2) The Pacific Council shall have one additional nonvoting member who shall be appointed by, and serve at the pleasure of, the Governor of Alaska.

(d) COMPENSATION AND EXPENSES.—The voting members of each Council, who are not employed by the Federal Government or any State or local government, shall receive compensation at the daily rate for GS-18 of the General Schedule when engaged in the actual performance of duties for such Council. The voting members of each Council, any nonvoting member described in subsection (c) (1) (C), and the nonvoting member appointed pursuant to subsection (c) (2) shall be reimbursed for actual expenses incurred in the performance of such duties.

(e) TRANSACTION OF BUSINESS.—

(1) A majority of the voting members of any Council shall constitute a quorum, but one or more such members designated by the Council may hold hearings. All decisions of any Council shall be by majority vote of the voting members present and voting.

(2) The voting members of each Council shall select a Chairman for such Council from among the voting members.

(3) Each Council shall meet in the geographical area concerned at the call of the Chairman or upon the request of a majority of its voting members.

(4) If any voting member of a Council disagrees with respect to any matter which is transmitted to the Secretary by such Council, such member may submit a statement to the Secretary setting forth the reasons for such disagreement.

(f) STAFF AND ADMINISTRATION.—

(1) Each Council may appoint, and assign duties to, an executive director and such other full- and part-time administrative employees as the Secretary determines are necessary to the performance of its functions.

(2) Upon the request of any Council, and after consultation with the Secretary, the head of any Federal agency is authorized to detail to such Council, on a reimbursable basis, any of the personnel of such agency, to assist such Council in the performance of its functions under this Act.

(3) The Secretary shall provide to each Council such administrative and technical support services as are necessary for the effective functioning of such Council.

(4) The Administrator of General Services shall furnish each Council with such offices, equipment, supplies, and services as he is authorized to furnish to any other agency or instrumentality of the United States.

(5) The Secretary and the Secretary of State shall furnish each Council with relevant information concerning foreign fishing and international fishery agreements.

(6) Each Council shall determine its organization, and prescribe its practices and procedures for carrying out its functions under this Act, in accordance with such uniform standards as are prescribed by the Secretary. Each Council shall publish and make available to the public a statement of its organization, practices, and procedures.

(7) The Secretary shall pay—

(A) the compensation and expenses provided for in subsection (d);

(B) appropriate compensation to employees appointed under paragraph (1);

(C) the amounts required for reimbursement of other Federal agencies under paragraphs (2) and (4);

(D) the actual expenses of the members of the committees and panels established under subsection (g); and

(E) such other costs as the Secretary determines are necessary to the performance of the functions of the Councils.

(g) COMMITTEES AND PANELS.—

(1) Each Council shall establish and maintain, and appoint the members of, a scientific and statistical committee to assist it in the development, collection, and evaluation of such statistical, biological, economic, social, and other scientific information as is relevant to such Council's development and amendment of any fishery management plan.

(2) Each Council shall establish such other advisory panels as are necessary or appropriate to assist it in carrying out its functions under this Act.

(h) FUNCTIONS.—Each Council shall, in accordance with the provisions of this Act—

(1) prepare and submit to the Secretary a fishery management plan with respect to each fishery within its geographical area of authority and, from time to time, such amendments to each such plan as are necessary;

(2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B), and any fishery management plan or amendment transmitted to it under section 304(c)(2);

(3) conduct public hearings, at appropriate times and in appropriate locations in the geographical area concerned, so as to allow all interested persons an opportunity to be heard in the development of fishery management plans and amendments to such plans, and with respect to the administration and implementation of the provisions of this Act;

(4) submit to the Secretary—

(A) a report, before February 1 of each year, on the Council's activities during the immediately preceding calendar year,

(B) such periodic reports as the Council deems appropriate, and

(C) any other relevant report which may be requested by the Secretary;

(5) review on a continuing basis, and revise as appropriate, the assessments and specifications made pursuant to section 303(a)(3) and (4) with respect to the optimum yield from, and the total allowable level of foreign fishing in, each fishery within its geographical area of authority; and

(6) conduct any other activities which are required by, or provided for in, this Act or which are necessary and appropriate to the foregoing functions.

SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) **REQUIRED PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall—

(1) contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, which are—

(A) necessary and appropriate for the conservation and management of the fishery;

(B) described in this subsection or subsection (b), or both; and

(C) consistent with the national standards, the other provisions of this Act, and any other applicable law;

(2) contain a description of the fishery, including, but not limited to, the number of vessels involved, the type and quantity of fishing gear used, the species of fish involved and their location, the cost likely to be incurred in management, actual and potential revenues from the fishery, any recreational interests in the fishery, and the nature and extent of foreign fishing and Indian treaty fishing rights, if any;

(3) assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification;

(4) assess and specify—

(A) the capacity and the extent to which fishing vessels of the United States, on an annual basis, will harvest the optimum yield specified under paragraph (3), and

(B) the portion of such optimum yield which, on an annual basis, will not be harvested by fishing vessels of the United States and can be made available for foreign fishing; and

(5) specify the pertinent data which shall be submitted to the Secretary with respect to the fishery, including, but not limited to, information regarding the type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, and number of hauls.

(b) **DISCRETIONARY PROVISIONS.**—Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, may—

(1) require a permit to be obtained from, and fees to be paid to, the Secretary with respect to any fishing vessel of the United States fishing, or wishing to fish, in the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond such zone;

(2) designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

(3) establish specified limitations on the catch of fish (based on area, species, size, number, weight, sex, incidental catch, total biomass, or other factors), which are necessary and appropriate for the conservation and management of the fishery;

(4) prohibit, limit, condition, or require the use of specified types and quantities of fishing gear, fishing vessels, or equipment for such vessels, including devices which may be required to facilitate enforcement of the provisions of this Act;

(5) incorporate (consistent with the national standards, the other provisions of this Act, and any other applicable law) the relevant fishery conservation and management measures of the coastal States nearest to the fishery;

(6) establish a system for limiting access to the fishery in order to achieve optimum yield if, in developing such system, the Council and the Secretary take into account—

(A) present participation in the fishery,

(B) historical fishing practices in, and dependence on, the fishery,

(C) the economics of the fishery,

(D) the capability of fishing vessels used in the fishery to engage in other fisheries,

(E) the cultural and social framework relevant to the fishery, and

(F) any other relevant considerations; and

(7) prescribe such other measures, requirements, or conditions and restrictions as are determined to be necessary and appropriate for the conservation and management of the fishery.

(c) **PROPOSED REGULATIONS.**—Any Council may prepare any proposed regulations which it deems necessary and appropriate to carry out any fishery management plan, or any amendment to any fishery management plan, which is prepared by it. Such proposed regulations shall be submitted to the Secretary, together with such plan or amendment, for action by the Secretary pursuant to sections 304 and 305.

(d) **CONFIDENTIALITY OF STATISTICS.**—Any statistics submitted to the Secretary by any person in compliance with any requirement under subsection (a)(5) shall be confidential and shall not be disclosed except when required under court order. The Secretary shall, by regulation, prescribe such procedures as may be necessary to preserve such confidentiality, except that the Secretary may release or make public any such statistics in any aggregate or summary form which does not directly or indirectly disclose the identity or business of any person who submits such statistics.

SEC. 304. ACTION BY THE SECRETARY.

(a) **ACTION BY THE SECRETARY AFTER RECEIPT OF PLAN.**—Within 60 days after the Secretary receives any fishery management plan, or any amendment to any such plan, which is prepared by any Council, the Secretary shall—

(1) review such plan or amendment pursuant to subsection (b);

and

(2) notify such Council in writing of his approval, disapproval, or partial disapproval of such plan or amendment.

In the case of disapproval or partial disapproval, the Secretary shall include in such notification a statement and explanation of the Secretary's objections and the reasons therefor, suggestions for improvement, a request to such Council to change such plan or amendment to satisfy the objections, and a request to resubmit the plan or amendment, as so modified, to the Secretary within 45 days after the date on which the Council receives such notification.

(b) **REVIEW BY THE SECRETARY.**—The Secretary shall review any fishery management plan, and any amendment to any such plan, prepared by any Council and submitted to him to determine whether

it is consistent with the national standards, the other provisions of this Act, and any other applicable law. In carrying out such review, the Secretary shall consult with—

- (1) the Secretary of State with respect to foreign fishing;
- and
- (2) the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(c) PREPARATION BY THE SECRETARY.—(1) The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if—

- (A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;
- or
- (B) the Secretary disapproves or partially disapproves any such plan or amendment, and the Council involved fails to change such plan or amendment in accordance with the notification made under subsection (a) (2).

In preparing any such plan or amendment, the Secretary shall consult with the Secretary of State with respect to foreign fishing and with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea.

(2) Whenever, pursuant to paragraph (1), the Secretary prepares a fishery management plan or amendment, the Secretary shall promptly transmit such plan or amendment to the appropriate Council for consideration and comment. Within 45 days after the date of receipt of such plan or amendment, the appropriate Council may recommend, to the Secretary, changes in such plan or amendment, consistent with the national standards, the other provisions of this Act, and any other applicable law. After the expiration of such 45-day period, the Secretary may implement such plan or amendment pursuant to section 305.

(3) Notwithstanding paragraph (1), the Secretary may not include in any fishery management plan, or any amendment to any such plan, prepared by him, a provision establishing a limited access system described in section 303(b) (6), unless such system is first approved by a majority of the voting members, present and voting, of each appropriate Council.

(d) ESTABLISHMENT OF FEES.—The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to section 303(b) (1). Such level shall not exceed the administrative costs incurred by the Secretary in issuing such permits.

(e) FISHERIES RESEARCH.—The Secretary shall initiate and maintain a comprehensive program of fishery research to carry out and further the purposes, policy, and provisions of this Act. Such program shall be designed to acquire knowledge and information, including statistics, on fishery conservation and management, including, but not limited to, biological research concerning the interdependence of fisheries or stocks of fish, the impact of pollution on fish, the impact of wetland and estuarine degradation, and other matters bearing upon the abundance and availability of fish.

(f) MISCELLANEOUS DUTIES.—(1) If any fishery extends beyond the geographical area of authority of any one Council, the Secretary may—

- (A) designate which Council shall prepare the fishery management plan for such fishery and any amendment to such plan; or

(B) may require that the plan and amendment be prepared jointly by the Councils concerned.

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of the voting members, present and voting, of each Council concerned.

(2) The Secretary shall establish the boundaries between the geographical areas of authority of adjacent Councils.

SEC. 305. IMPLEMENTATION OF FISHERY MANAGEMENT PLANS.

(a) **IN GENERAL.**—As soon as practicable after the Secretary—

(1) approves, pursuant to section 304 (a) and (b), any fishery management plan or amendment; or

(2) prepares, pursuant to section 304(c), any fishery management plan or amendment;

the Secretary shall publish in the Federal Register (A) such plan or amendment, and (B) any regulations which he proposes to promulgate to implement such plan or amendment. Interested persons shall be afforded a period of not less than 45 days after such publication within which to submit in writing data, views, or comments on the plan or amendment, and on the proposed regulations.

(b) **HEARING.**—The Secretary may schedule a hearing, in accordance with section 553 of title 5, United States Code, on any fishery management plan, any amendment to any such plan, and any regulations to implement any such plan or amendment. If any such hearing is scheduled, the Secretary may, pending its outcome—

(A) postpone the effective date of the regulations proposed to implement such plan or amendment; or

(B) take such other action as he deems appropriate to preserve the rights or status of any person.

(c) **IMPLEMENTATION.**—The Secretary shall promulgate regulations to implement any fishery management plan or any amendment to any such plan—

(1) after consideration of all relevant matters—

(A) presented to him during the 45-day period referred to in subsection (a), and

(B) produced in any hearing held under subsection (b); and

(2) if he finds that the plan or amendment is consistent with the national standards, the other provisions of this Act, and any other applicable law.

To the extent practicable, such regulations shall be put into effect in a manner which does not disrupt the regular fishing season for any fishery.

(d) **JUDICIAL REVIEW.**—Regulations promulgated by the Secretary under this Act shall be subject to judicial review to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code, if a petition for such review is filed within 30 days after the date on which the regulations are promulgated; except that (1) section 705 of such title is not applicable, and (2) the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title.

(e) **EMERGENCY ACTIONS.**—If the Secretary finds that an emergency involving any fishery resources exists, he may—

(1) promulgate emergency regulations, without regard to subsections (a) and (c), to implement any fishery management plan, if such emergency so requires; or

(2) promulgate emergency regulations to amend any regulation which implements any existing fishery management plan, to the extent required by such emergency.

Any emergency regulation which changes any existing fishery management plan shall be treated as an amendment to such plan for the period in which such regulation is in effect. Any emergency regulation promulgated under this subsection (A) shall be published in the Federal Register together with the reasons therefor; (B) shall remain in effect for not more than 45 days after the date of such publication, except that any such regulation may be repromulgated for one additional period of not more than 45 days; and (C) may be terminated by the Secretary at any earlier date by publication in the Federal Register of a notice of termination.

(f) **ANNUAL REPORT.**—The Secretary shall report to the Congress and the President, not later than March 1 of each year, on all activities of the Councils and the Secretary with respect to fishery management plans, regulations to implement such plans, and all other activities relating to the conservation and management of fishery resources that were undertaken under this Act during the preceding calendar year.

(g) **RESPONSIBILITY OF THE SECRETARY.**—The Secretary shall have general responsibility to carry out any fishery management plan or amendment approved or prepared by him, in accordance with the provisions of this Act. The Secretary may promulgate such regulations, in accordance with section 553 of title 5, United States Code, as may be necessary to discharge such responsibility or to carry out any other provision of this Act.

SEC. 306. STATE JURISDICTION.

(a) **IN GENERAL.**—Except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any State within its boundaries. No State may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries, unless such vessel is registered under the laws of such State.

(b) **EXCEPTION.**—(1) If the Secretary finds, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, that—

(A) the fishing in a fishery, which is covered by a fishery management plan implemented under this Act, is engaged in predominately within the fishery conservation zone and beyond such zone; and

(B) any State has taken any action, or omitted to take any action, the results of which will substantially and adversely affect the carrying out of such fishery management plan;

the Secretary shall promptly notify such State and the appropriate Council of such finding and of his intention to regulate the applicable fishery within the boundaries of such State (other than its internal waters), pursuant to such fishery management plan and the regulations promulgated to implement such plan.

(2) If the Secretary, pursuant to this subsection, assumes responsibility for the regulation of any fishery, the State involved may at any time thereafter apply to the Secretary for reinstatement of its authority over such fishery. If the Secretary finds that the reasons for which he assumed such regulation no longer prevail, he shall promptly terminate such regulation.

SEC. 307. PROHIBITED ACTS.

It is unlawful—

(1) for any person—

(A) to violate any provision of this Act or any regulation or permit issued pursuant to this Act;

(B) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, of an applicable permit issued pursuant to this Act;

(C) to violate any provision of, or regulation under, an applicable governing international fishery agreement entered into pursuant to section 201 (c);

(D) to refuse to permit any officer authorized to enforce the provisions of this Act (as provided for in section 311) to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C);

(E) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search or inspection described in subparagraph (D);

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

(G) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act or any regulation, permit, or agreement referred to in subparagraph (A) or (C); or

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

(2) for any vessel other than a vessel of the United States, and for the owner or operator of any vessel other than a vessel of the United States, to engage in fishing—

(A) within the boundaries of any State; or

(B) within the fishery conservation zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204 (b) or (c).

SEC. 308. CIVIL PENALTIES.

(a) ASSESSMENT OF PENALTY.—Any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have committed an act prohibited by section 307 shall be liable to the United States for a civil penalty. The amount of the civil penalty shall not exceed \$25,000 for each violation. Each day of a continuing violation shall constitute a separate offense. The amount of such civil penalty shall be assessed by the Secretary, or his designee, by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the prohibited acts committed and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.

(b) REVIEW OF CIVIL PENALTY.—Any person against whom a civil penalty is assessed under subsection (a) may obtain review thereof in the appropriate court of the United States by filing a notice of appeal in such court within 30 days from the date of such order and by simultaneously sending a copy of such notice by certified mail to the Secretary. The Secretary shall promptly file in such court a certified copy of the record upon which such violation was found

or such penalty imposed, as provided in section 2112 of title 28, United States Code. The findings and order of the Secretary shall be set aside by such court if they are not found to be supported by substantial evidence, as provided in section 706(2) of title 5, United States Code.

(c) **ACTION UPON FAILURE TO PAY ASSESSMENT.**—If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, or after the appropriate court has entered final judgment in favor of the Secretary, the Secretary shall refer the matter to the Attorney General of the United States, who shall recover the amount assessed in any appropriate district court of the United States. In such action, the validity and appropriateness of the final order imposing the civil penalty shall not be subject to review.

(d) **COMPROMISE OR OTHER ACTION BY SECRETARY.**—The Secretary may compromise, modify, or remit, with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

SEC. 309. CRIMINAL OFFENSES.

(a) **OFFENSES.**—A person is guilty of an offense if he commits any act prohibited by—

- (1) section 307(1) (D), (E), (F), or (H); or
- (2) section 307(2).

(b) **PUNISHMENT.**—Any offense described in subsection (a) (1) is punishable by a fine of not more than \$50,000, or imprisonment for not more than 6 months, or both; except that if in the commission of any such offense the person uses a dangerous weapon, engages in conduct that causes bodily injury to any officer authorized to enforce the provisions of this Act (as provided for in section 311), or places any such officer in fear of imminent bodily injury, the offense is punishable by a fine of not more than \$100,000, or imprisonment for not more than 10 years, or both. Any offense described in subsection (a) (2) is punishable by a fine of not more than \$100,000, or imprisonment for not more than 1 year, or both.

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

SEC. 310. CIVIL FORFEITURES.

(a) **IN GENERAL.**—Any fishing vessel (including its fishing gear, furniture, appurtenances, stores, and cargo) used, and any fish taken or retained, in any manner, in connection with or as a result of the commission of any act prohibited by section 307 (other than any act for which the issuance of a citation under section 311(c) is sufficient sanction) shall be subject to forfeiture to the United States. All or part of such vessel may, and all such fish shall, be forfeited to the United States pursuant to a civil proceeding under this section.

(b) **JURISDICTION OF COURTS.**—Any district court of the United States which has jurisdiction under section 311(d) shall have jurisdiction, upon application by the Attorney General on behalf of the United States, to order any forfeiture authorized under subsection (a) and any action provided for under subsection (d).

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

- (1) the disposition of forfeited property,
- (2) the proceeds from the sale of forfeited property,

- (3) the remission or mitigation of forfeitures, and
- (4) the compromise of claims,

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

(d) PROCEDURE.—(1) Any officer authorized to serve any process in rem which is issued by a court having jurisdiction under section 311 (d) shall—

- (A) stay the execution of such process; or
- (B) discharge any fish seized pursuant to such process;

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

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

(e) REBUTTABLE PRESUMPTION.—For purposes of this section, it shall be a rebuttable presumption that all fish found on board a fishing vessel which is seized in connection with an act prohibited by section 307 were taken or retained in violation of this Act.

SEC. 311. ENFORCEMENT.

(a) RESPONSIBILITY.—The provisions of this Act shall be enforced by the Secretary and the Secretary of the department in which the Coast Guard is operating. Such Secretaries may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels), and facilities of any other Federal agency, including all elements of the Department of Defense, and of any State agency, in the performance of such duties. Such Secretaries shall report semiannually, to each committee of the Congress listed in section 203(b) and to the Councils, on the degree and extent of known and estimated compliance with the provisions of this Act.

(b) POWERS OF AUTHORIZED OFFICERS.—Any officer who is authorized (by the Secretary, the Secretary of the department in which the Coast Guard is operating, or the head of any Federal or State agency which has entered into an agreement with such Secretaries under subsection (a)) to enforce the provisions of this Act may—

- (1) with or without a warrant or other process—
 - (A) arrest any person, if he has reasonable cause to believe that such person has committed an act prohibited by section 307;
 - (B) board, and search or inspect, any fishing vessel which is subject to the provisions of this Act;
 - (C) seize any fishing vessel (together with its fishing gear, furniture, appurtenances, stores, and cargo) used or employed

in, or with respect to which it reasonably appears that such vessel was used or employed in, the violation of any provision of this Act;

(D) seize any fish (wherever found) taken or retained in violation of any provision of this Act; and

(E) seize any other evidence related to any violation of any provision of this Act;

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

(3) exercise any other lawful authority.

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

(d) **JURISDICTION OF COURTS.**—The district courts of the United States shall have exclusive jurisdiction over any case or controversy arising under the provisions of this Act. In the case of Guam, and any Commonwealth, territory, or possession of the United States in the Pacific Ocean, the appropriate court is the United States District Court for the District of Guam, except that in the case of American Samoa, the appropriate court is the United States District Court for the District of Hawaii. Any such court may, at any time—

(1) enter restraining orders or prohibitions;

(2) issue warrants, process in rem, or other process;

(3) prescribe and accept satisfactory bonds or other security;

and

(4) take such other actions as are in the interest of justice.

(e) **DEFINITION.**—For purposes of this section—

(1) The term “provisions of this Act” includes (A) any regulation or permit issued pursuant to this Act, and (B) any provision of, or regulation issued pursuant to, any international fishery agreement under which foreign fishing is authorized by section 201 (b) or (c), with respect to fishing subject to the exclusive fishery management authority of the United States.

(2) The term “violation of any provision of this Act” includes (A) the commission of any act prohibited by section 307, and (B) the violation of any regulation, permit, or agreement referred to in paragraph (1).

SEC. 312. EFFECTIVE DATE OF CERTAIN PROVISIONS.

Sections 307, 308, 309, 310, and 311 shall take effect March 1, 1977.

TITLE IV—MISCELLANEOUS PROVISIONS

SEC. 401. EFFECT ON LAW OF THE SEA TREATY.

If the United States ratifies a comprehensive treaty, which includes provisions with respect to fishery conservation and management jurisdiction, resulting from any United Nations Conference on the Law of the Sea, the Secretary, after consultation with the Secretary of State, may promulgate any amendment to the regulations promulgated under this Act if such amendment is necessary and appropriate to

conform such regulations to the provisions of such treaty, in anticipation of the date when such treaty shall come into force and effect for, or otherwise be applicable to, the United States.

SEC. 402. REPEALS.

(a) The Act of October 14, 1966 (16 U.S.C. 1091-1094), is repealed as of March 1, 1977.

(b) The Act of May 20, 1964 (16 U.S.C. 1081-1086), is repealed as of March 1, 1977.

SEC. 403. FISHERMEN'S PROTECTIVE ACT AMENDMENTS.

(a) AMENDMENTS.—The Act of August 27, 1954 (22 U.S.C. 1972), is amended—

(1) by amending section 2 thereof to read as follows:

“SEC. 2. If—

“(1) any vessel of the United States is seized by a foreign country on the basis of claims in territorial waters or the high seas which are not recognized by the United States; or

“(2) any general claim of any foreign country to exclusive fishery management authority is recognized by the United States, and any vessel of the United States is seized by such foreign country on the basis of conditions and restrictions under such claim, if such conditions and restrictions—

“(A) are unrelated to fishery conservation and management,

“(B) fail to consider and take into account traditional fishing practices of vessels of the United States,

“(C) are greater or more onerous than the conditions and restrictions which the United States applies to foreign fishing vessels subject to the exclusive fishery management authority of the United States (as established in title I of the Fishery Conservation and Management Act of 1976), or

“(D) fail to allow fishing vessels of the United States equitable access to fish subject to such country's exclusive fishery management authority;

and there is no dispute as to the material facts with respect to the location or activity of such vessel at the time of such seizure, the Secretary of State shall immediately take such steps as are necessary—

“(i) for the protection of such vessel and for the health and welfare of its crew;

“(ii) to secure the release of such vessel and its crew; and

“(iii) to determine the amount of any fine, license, fee, registration fee, or other direct charge reimbursable under section 3(a) of this Act.”; and

(2) by amending section 3(a) thereof by inserting immediately before the last sentence thereof the following new sentence: “For purposes of this section, the term ‘other direct charge’ means any levy, however characterized or computed (including, but not limited to, any computation based on the value of a vessel or the value of fish or other property on board a vessel), which is imposed in addition to any fine, license fee, or registration fee.”

(b) EFFECTIVE DATE.—The amendment made by subsection (a) (1) shall take effect March 1, 1977. The amendment made by subsection (a) (2) shall apply with respect to seizures of vessels of the United States occurring on or after December 31, 1974.

SEC. 404. MARINE MAMMAL PROTECTION ACT AMENDMENT.

(a) AMENDMENT.—Section 3(15)(B) of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1362(15)(B)) is amended by striking

out “the fisheries zone established pursuant to the Act of October 14, 1966.” and inserting in lieu thereof “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured.”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 405. ATLANTIC TUNAS CONVENTION ACT AMENDMENT.

(a) **AMENDMENT.**—Section 2(4) of the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971(4)) is amended by striking out “the fisheries zone established pursuant to the Act of October 14, 1966 (80 Stat. 908; 16 U.S.C. 1091–1094),” and inserting in lieu thereof “the waters included within a zone, contiguous to the territorial sea of the United States, of which the inner boundary is a line coterminous with the seaward boundary of each coastal State, and the outer boundary is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured,”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect March 1, 1977.

SEC. 406. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary, for purposes of carrying out the provisions of this Act, not to exceed the following sums:

- (1) \$5,000,000 for the fiscal year ending June 30, 1976.
- (2) \$5,000,000 for the transitional fiscal quarter ending September 30, 1976.
- (3) \$25,000,000 for the fiscal year ending September 30, 1977.
- (4) \$30,000,000 for the fiscal year ending September 30, 1978.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*

April 1, 1976

Dear Mr. Director:

The following bills were received at the White House on April 1st:

- ✓ S. 3060
- ✓ H.R. 49
- ✓ H.R. 200
- ✓ H.R. 8617

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.

