

House Committee on Natural Resources

Rob Bishop, Chairman

Markup Memo

April 27, 2015

To: House Committee on Natural Resources Members

From: Water, Power and Oceans Subcommittee Republican staff

Hearing: April 29-30, 2015 Markup of H.R. 774 (Bordallo, Guam), *“Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015.”*

To strengthen enforcement mechanisms to stop illegal, unreported, and unregulated fishing, to amend the Tuna Conventions Act of 1950 to implement the Antigua Convention, and for other purposes.

“Illegal, Unreported, and Unregulated Fishing Enforcement Act of 2015”

Bill Summary

H.R. 774 amends implementing statutes for eight existing international fishery agreements to combat illegal, unreported and unregulated fishing operations. The bill is an incremental continuation of prior congressional legislation and reflects bipartisan discussions to help ensure that our domestic fishing industry is not harmed by these provisions. As a result, the bipartisan bill has widespread support throughout the fishing community and the domestic seafood industry.

Cosponsors

Reps. Lois Capps (D-CA), Carlos Curbelo (R-FL), Peter DeFazio (D-OR), Blake Farenthold (R-TX), John Garamendi (D-CA), Jared Huffman (D-CA), Duncan Hunter (R-CA), David Jolly (R-FL), William Keating (D-MA), Alan Lowenthal, (D-CA), Grace Napolitano (D-CA), Pedro Pierluisi (D-PR), Aumua Amata Radewagen (R-AS), Edward Royce (R-CA), Gregorio Kilili Camacho Sablan (D-CNMI), Mike Thompson (D-CA), Randy Weber, Sr. (R-TX), Roger Williams (R-TX), Rob Wittman (R-VA) and Don Young (R-AK).

Background

Illegal, Unregulated and Unreported (IUU) fishing, sometimes referred to as “pirate fishing,” is a wide-range of fishing activities that fail to comply with national, regional, or global fisheries conservation and management requirements. These unlawful practices impact various sectors of the U.S. seafood industry, including seafood harvesters and processors operating on and off our nation’s coasts and seafood retailers around the country. One of this bill’s goals is to help ensure that the seafood found in American restaurants and grocery stores was legally harvested with no adverse effects to the price consumers pay for these products.

On January 12, 2011, the National Oceanic and Atmospheric Administration (NOAA) published a final rule¹ implementing the provisions of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006 (MSRA or P.L. 109-479)² that defined “illegal, unreported, and unregulated fishing” to include:

1. Fishing activities that violate conservation and management measures required under an international fishery management agreement to which the United States is a party, including catch limits or quotas, capacity restrictions, and bycatch reduction requirements;
2. Overfishing of fish stocks shared by the United States; and
3. Fishing activity that has an adverse impact on seamounts, hydrothermal vents, and cold water corals located beyond national jurisdiction, for which there are no applicable conservation or management measures or in areas with no applicable international fishery management organization or agreement.

By nature of being illegal and unreported, the economic cost of IUU fishing is difficult to quantify since these are clandestine activities. Some estimates suggest that IUU fishing results in economic losses between \$10 to \$23.5 billion dollars worldwide annually.³ These practices place legitimate fisherman at a disadvantage in the domestic and global markets by evading overhead costs and flooding the seafood market with illegally harvested fish products. IUU fishing threatens to devastate shared fish stocks by routinely targeting fish species with the most stringent regional fisheries management organization (RFMO) restrictions. These species, which are short in supply and high in demand, are the most attractive since they have the most value at market.

As one of the world’s largest importers of seafood, the United States has a variety of domestic enforcement measures at its disposal to combat illegal fishing and help ensure that U.S. fishermen are on an equal playing field with the seafood industry as a whole. The High Seas Driftnet Fishing Moratorium Protection Act authorizes the Secretary of Commerce (through NOAA) to issue a report biennially to Congress listing which fish-exporting countries have engaged in IUU fishing and/or bycatch of protected resources,⁴ and to consult with those countries on improving their fisheries management and enforcement practices.⁵ In addition, the Lacey Act⁶ prohibits interstate and foreign trafficking of fish or wildlife taken in violation of domestic or foreign law. For Fiscal Year (FY) 2015, NOAA has been appropriated \$66 million for “Combating Illegal, Unreported and Unregulated Fishing and Seafood Fraud,” and 217 full-

¹ <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title16-section1826j&num=0&edition=prelim>

² <http://www.gpo.gov/fdsys/pkg/PLAW-109publ479/pdf/PLAW-109publ479.pdf>

³ David J. Agnew et al., Estimating Worldwide Extent of Illegal Fishing, PLoS ONE, Feb. 2009 at 4.

⁴ <http://www.gpo.gov/fdsys/pkg/PLAW-109publ479/pdf/PLAW-109publ479.pdf>, Section 401

⁵ Id., at p.52

⁶ <http://www.fws.gov/e/pdffiles/Lacey.pdf>

time employees.⁷ NOAA requested an additional \$3 million and 15 full-time employees in its FY 2016 budget proposal.⁸

Although the U.S. has laws in effect to help combat illegal fishing, international cooperation is necessary to ensure that global enforcement and penalties are in place to close the world's ports to illegally harvested fish and to certify that these products never make it onto the global seafood market. Without international enforcement, illegal fishermen are operating in an environment where the monetary reward of IUU fishing far outweighs the risk of being caught. H.R. 774's goal is to further international cooperation.

The House Natural Resources Committee passed similar legislation (H.R. 69)⁹ in the last Congress, but no action was taken by the full House. Some domestic commercial fishing industry voiced concerns over H.R. 69 that their fleets would be burdened with increased enforcement by NOAA and other federal and state law enforcement entities.¹⁰ H.R. 774 remedies those concerns and now has the support of the domestic seafood industry.

Major Provisions/Analysis of H.R. 774

Title I: Strengthening Fisheries Enforcement Mechanisms

Amends and standardizes the implementing statutes for eight existing international fishery agreements to impose the sanctions of the High Seas Driftnet Fishing Moratorium Protection Act, while also applying civil penalties, criminal offenses, and civil forfeitures against persons who violate new enforcement provisions.¹¹ Those agreements include: the Pacific Salmon Treaty Act of 1985; the Dolphin Protection Consumer Information Act; the Tuna Conventions Act of 1950; the North Pacific Anadromous Stocks Act of 1992; the Atlantic Tunas Convention Act of 1975; the Northwest Atlantic Fisheries Convention Act of 1995; the Western and Central Pacific Fisheries Convention Implementation Act; and the Antigua Convention Implementing Act of 2015.

Authorizes the Secretary of Commerce to participate in and provide assistance to international efforts that address IUU fishing activities, bycatch concerns, fisheries monitoring, and other actions aimed at helping nations achieve sustainable fisheries.¹² The bill grants additional enforcement authority related to illegally harvested or imported fish products, while also allowing the Secretary to share that information with specified others who implement

⁷ Department of Commerce FY16 Budget Justification at NMFS 88

⁸ Id.

⁹ <http://www.gpo.gov/fdsys/pkg/BILLS-113hr69rh/pdf/BILLS-113hr69rh.pdf>

¹⁰ Testimony of Mr. James P. Walsh, before the House Fisheries, Wildlife, Oceans and Insular Affairs Subcommittee, April 3, 2014, p. 8

¹¹ <http://www.gpo.gov/fdsys/pkg/BILLS-114hr774ih/pdf/BILLS-114hr774ih.pdf>, Section 101

¹² Id.

international fishing agreements. This is achieved through a provision that overrides existing data confidentiality standards contained in the Magnuson-Stevens Act.¹³

The bill requires the Secretary to notify the President and any nation whose vessel has been identified engaging in IUU fishing activities or practices within the past three years and authorizes the Secretary to take actions against nations who have failed to address or regulate the illegal activity.¹⁴ The High Seas Fishing Compliance Act of 1965 is amended so that a permit issued to a vessel is void if any other permit or authorization required for the vessel to fish is expired, revoked, suspended, or does not meet certain other criteria.¹⁵

Title II: Implementation of the Antigua Convention

This title implements the Convention for the Strengthening of the Inter-American Tropical Tuna Commission (IAATC) established by the 1949 Convention between the United States and the Republic of Costa Rica, also known as the “Antigua Convention.” The Antigua Convention is an international agreement responsible for the management of tunas and other migratory species in the eastern Pacific Ocean. This provision would amend the Tunas Conventions Act of 1950 to establish new procedures for appointing the Commissioners, Alternate Commissioners, and compensation and expenses for these Commissioners.¹⁶ A General Advisory Committee is created along with a Science Advisory Subcommittee.¹⁷ The Secretary of Commerce is authorized to promulgate regulations with respect to enforcement matters related to the Convention,¹⁸ the High Seas Driftnet Fishing Moratorium Protection Act is amended to provide for prohibited acts and enforcement of the agreement,¹⁹ and the Eastern Pacific Tuna Licensing Act of 1984 is repealed.²⁰

Title III: Agreement of Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

This title implements the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement), which is an international treaty adopted by the United Nations in 2009 to prevent illegally caught fish from entering the world ports and global seafood market. The United States ratified this treaty with bipartisan support in April 2014, but the Agreement will not take effect until the treaty is ratified by 25 countries (the U.S. is the 11th party to ratify the Agreement).²¹

The Commerce Secretary is authorized, but not required, to designate and publicize ports of entry for foreign vessels, persons, private entities or governments seeking entry to a port under

¹³ <http://www.gpo.gov/fdsys/pkg/BILLS-114hr774ih/pdf/BILLS-114hr774ih.pdf>, Section 101

¹⁴ Id.

¹⁵ Id., Section 108

¹⁶ Id., Section 204

¹⁷ Id., Section 205

¹⁸ Id., Section 206

¹⁹ Id., Section 208

²⁰ Id., Section 210

²¹ <https://www.congress.gov/treaty-document/112th-congress/4/resolution-text>

U.S. jurisdiction. The bill requires these vessels and entities to submit to the Secretary prior to arriving in a port the information requested in Article 8, Annex A of the Port States Measures Agreement.²²

Section 305 of the bill authorizes the Secretary, based on the information supplied by the aforementioned parties, to authorize or deny port entry and communicate this decision to the foreign vessel or its representative. A vessel may be denied entry if it is listed as an IUU vessel; the Secretary has reasonable grounds to believe has engaged in IUU fishing or fishing related activities; or the Secretary has reasonable grounds to believe has violated this Act. In addition, a notice of denial of port entry decision must be sent to the flag nation of the vessel and, as appropriate, each relevant coastal nation, RFMO, and international organization. Despite the authority to deny port privileges, the Secretary is authorized to permit entry to a vessel for scrapping, inspection, enforcement, or to assist a vessel or person in danger or distress.²³

If the vessel is in a port or is allowed entry to a U.S. port, the Secretary is required to deny the use of the port for landing, transshipping, packing or processing of fish, refueling, resupplying, performing maintenance, or the use of dry dock facilities to that vessel if the vessel entered the port without authorization, is a listed IUU vessel, or meets certain other criteria.²⁴

The bill requires the Secretary and the Coast Guard to conduct vessel inspections.²⁵ The bill allows an authorized officer to make arrests; board, search or inspect vessels; seize gear; execute and serve subpoenas; inspect facilities and records; and perform other activities if there is probable cause that prohibited acts under this legislation have been violated. If, following an inspection, the Secretary has reasonable grounds to believe that a foreign vessel has engaged in IUU fishing or activities in support of IUU fishing, the Secretary may take enforcement action and must deny the vessel the use of port services outlined in Section 305.²⁶ Provisions have been added that make it unlawful for any person subject to the jurisdiction of the U.S. to impede or refuse to permit boarding to an authorized officer conducting an investigation or enforcement activities; resist lawful arrest; submit false information; and various other activities,²⁷ and imposes fines and criminal penalties for any person found violating these prohibited acts.²⁸

Cost:

H.R. 774 authorizes appropriations of \$450,000 for each of Fiscal Years 2016 through 2020 to implement the amendments made by Title I, Section 101, subsections (b) and (g) that require the Secretary to identify nations whose vessels have engaged in IUU fishing activities in the past three years, and to transmit that data to other international fishery management organizations.

²² http://www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf, at 7 and 24

²³ Id., Section 305

²⁴ Id.

²⁵ Id., Section 306

²⁶ Id., Section 308

²⁷ Id., Section 307

²⁸ Id., Section 308

Administration Position:

The Administration has signaled its support for H.R. 774.

Potential Amendments:

Congresswoman Bordallo is expected to offer an amendment making technical changes.

Effect on Current Law (Ramseyer)

http://naturalresources.house.gov/UploadedFiles/H774_Mini_Ram_xml.pdf