

LIMITATION ON CERTAIN FISHERIES ENFORCEMENT
BASED ON OBSERVER REPORTS

DECEMBER 21, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5025]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5025) to amend the Western and Central Pacific Fisheries Convention Implementation Act to limit the imposition of penalties against a person fishing on a United States flag fishing vessel in certain areas of the Pacific Ocean based on a report by an observer on such a vessel, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 5025 is to amend the Western and Central Pacific Fisheries Convention Implementation Act to limit the imposition of penalties against a person fishing on the United States flag fishing vessel in certain areas of the Pacific Ocean based on a report by an observer on such a vessel.

BACKGROUND AND NEED FOR LEGISLATION

The coordinated management of shared fishery stocks in international waters (201 or more miles from U.S. shores) is accomplished by nations participating in Regional Fisheries Management Organizations (RFMOs). These international commissions guide and coordinate the fisheries management activities of multiple na-

tions in a specific region.¹ There are a number of RFMOs that the U.S. is party to, with the five major RFMOs being the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), the Inter-American Tropical Tuna Commission (IATTC), the International Commission for the Conservation of Atlantic Tuna (ICCAT), the Indian Ocean Tuna Commission (IOTC), and the Western and Central Pacific Fisheries Commission (WCPFC).²

In each case, an RFMO comprised of designees from each participating country and territory fosters cooperative management of these shared resources.³ Cooperation under such a convention allows the U.S. to address fisheries resources not covered under pre-existing fisheries management instruments and helps to prevent destructive fishing practices by other participating nations that may hurt domestic fisheries.⁴

The Western and Central Pacific Fisheries Convention Implementation Act (Public Law 109–479)⁵ was signed into law in January 2007 to codify the United States participation in the Convention and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.⁶ The Convention established the WCPFC which, according to its website, is responsible for overseeing the compliance of the Convention by signatory nations, as well as supporting three subsidiary committees: Scientific, Technical and Compliance, and Northern Committees.⁷

To ensure fair, consistent implementation and enforcement of the Convention, H.R. 5025 simply states that any U.S. flagged vessel that is accused of violating the Convention be afforded the opportunity to see the on-board observer’s report citing the violation within 60 days of the alleged violation taking place. The legislation also simply states that any enforcement action taken against a U.S. flagged vessel for a violation under the Convention be convened within one year of the violation occurring.

COMMITTEE ACTION

H.R. 5025 was introduced on February 14, 2018, Congresswoman Aumua Amata Coleman Radewagen (R–AS). The bill was referred to the Committee on Natural Resources and within the Committee to the Subcommittee on Water, Power and Oceans. On November 15, 2018, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No amendments were offered, and the bill was ordered favorably reported to the House of Representatives by a voice vote.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

¹ <http://www.state.gov/e/oes/ocns/fish/regionalorganizations/>.

² <http://www.fao.org/fishery/topic/12270/en>.

³ Id at 2.

⁴ Kelly Welsh letter to Chairman Rob Bishop, September 15, 2015.

⁵ Public Law 109–479, Signed January 12, 2007.

⁶ <https://www.wcpfc.int/about-wcpfc>.

⁷ Id at 6.

COMPLIANCE WITH HOUSE RULE XIII AND
CONGRESSIONAL BUDGET ACT

1. Cost of Legislation and the Congressional Budget Act. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has requested but not received a cost estimate for the bill from the Director of the Congressional Budget Office.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Western and Central Pacific Fisheries Convention Implementation Act to limit the imposition of penalties against a person fishing on the United States flag fishing vessel in certain areas of the Pacific Ocean based on a report by an observer on such a vessel.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

**WESTERN AND CENTRAL PACIFIC FISHERIES
CONVENTION IMPLEMENTATION ACT**

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TITLE V—IMPLEMENTATION OF WEST- ERN AND CENTRAL PACIFIC FISHERIES CONVENTION

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SEC. 507. PROHIBITED ACTS.

(a) IN GENERAL.—It is unlawful for any person—

(1) to violate any provision of this title or any regulation or permit issued pursuant to this title;

(2) to use any fishing vessel to engage in fishing after the revocation, or during the period of suspension, on an applicable permit issued pursuant to this title;

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) LIMITATION ON ENFORCEMENT BASED ON OBSERVER REPORTS.—*No person fishing on a United States flag fishing vessel in the Convention Area shall be subject to any penalty under this Act or any other law or regulation applicable to such vessels based on a report by an observer on such a vessel, unless—*

(1) the observer report is provided to the captain and the owner of the vessel within 60 days after the end of the fishing trip; and

(2) any enforcement action based on such report is brought within one year after the end of the fishing trip.

* * * * *

DISSENTING VIEWS

H.R. 5025 amends the Western and Central Pacific Fisheries Convention Implementation Act to make it more difficult to penalize a person for violating the Act. Specifically, H.R. 5025 limits the ability of NOAA law enforcement to bring charges against a person fishing on a United States flagged fishing vessel in the Convention area based on a report by a fisheries observer.

Fishery observers play an integral role in managing our nation's robust fisheries. They are highly trained biological scientists who gather data to support fishery conservation, management, and ensure compliance with fishing and safety regulations.

H.R. 5025 would only allow a penalty to apply if the observer report is provided to the captain and the owner of the vessel within 60 days after the end of the fishing trip and any enforcement action based on the report is brought within one year after the end of the fishing trip.

This bill is problematic because it often takes more than a year to bring enforcement action due to the lack of resources and the amount of time it takes to conduct a thorough investigation considering the international and transnational nature of the fleet. In addition, the information provided by the observer could not be used for a repeat offender if violations occur more than a year apart making it more difficult to go after the worst offenders. For these reasons, we oppose the bill as reported.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

ALAN LOWENTHAL.
GRACE F. NAPOLITANO.
JARED HUFFMAN.

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