

DRIFTNET MODERNIZATION AND BYCATCH REDUCTION
ACT

NOVEMBER 16, 2022.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 404]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 404) to improve the management of driftnet fishing, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Driftnet Modernization and Bycatch Reduction Act”.

SEC. 2. DEFINITION.

Section 3(25) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802(25)) is amended by inserting “, or with a mesh size of 14 inches or greater,” after “more”.

SEC. 3. FINDINGS AND POLICY.

(a) **FINDINGS.**—Section 206(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1826(b)) is amended—

- (1) in paragraph (6), by striking “and” at the end;
- (2) in paragraph (7), by striking the period and inserting “; and”; and
- (3) by adding at the end the following:

“(8) within the exclusive economic zone, large-scale driftnet fishing that deploys nets with large mesh sizes causes significant entanglement and mortality of living marine resources, including myriad protected species, despite limitations on the lengths of such nets.”.

(b) **POLICY.**—Section 206(c) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1826(c)) is amended—

- (1) in paragraph (2), by striking “and” at the end;
- (2) in paragraph (3), by striking the period and inserting “; and”; and
- (3) by adding at the end the following:

“(4) prioritize the phase out of large-scale driftnet fishing in the exclusive economic zone and promote the development and adoption of alternative fishing methods and gear types that minimize the incidental catch of living marine resources.”.

SEC. 4. TRANSITION PROGRAM.

Section 206 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1826) is amended by adding at the end the following—

“(i) FISHING GEAR TRANSITION PROGRAM.—

“(1) IN GENERAL.—During the 5-year period beginning on the date of enactment of the Driftnet Modernization and Bycatch Reduction Act, the Secretary shall conduct a transition program to facilitate the phase-out of large-scale driftnet fishing and adoption of alternative fishing practices that minimize the incidental catch of living marine resources, and shall award grants to eligible permit holders who participate in the program.

“(2) PERMISSIBLE USES.—Any permit holder receiving a grant under paragraph (1) may use such funds only for the purpose of covering—

“(A) any fee originally associated with a permit authorizing participation in a large-scale driftnet fishery, if such permit is surrendered for permanent revocation, and such permit holder relinquishes any claim associated with the permit;

“(B) a forfeiture of fishing gear associated with a permit described in subparagraph (A); or

“(C) the purchase of alternative gear with minimal incidental catch of living marine resources, if the fishery participant is authorized to continue fishing using such alternative gears.

“(3) CERTIFICATION.—The Secretary shall certify that, with respect to each participant in the program under this subsection, any permit authorizing participation in a large-scale driftnet fishery has been permanently revoked and that no new permits will be issued to authorize such fishing.”.

SEC. 5. EXCEPTION.

Section 307(1)(M) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857(1)(M)) is amended by inserting before the semicolon the following: “, unless such large-scale driftnet fishing—

“(i) deploys, within the exclusive economic zone, a net with a total length of less than two and one-half kilometers and a mesh size of 14 inches or greater; and

“(ii) is conducted within 5 years of the date of enactment of the Driftnet Modernization and Bycatch Reduction Act”.

SEC. 6. FEES.

(a) IN GENERAL.—The North Pacific Fishery Management Council may recommend, and the Secretary of Commerce may approve, regulations necessary for the collection of fees from charter vessel operators who guide recreational anglers who harvest Pacific halibut in International Pacific Halibut Commission regulatory areas 2C and 3A as those terms are defined in part 300 of title 50, Code of Federal Regulations (or any successor regulations).

(b) USE OF FEES.—Any fees collected under this section shall be available for the purposes of—

(1) financing administrative costs of the Recreational Quota Entity program;

(2) the purchase of halibut quota shares in International Pacific Halibut Commission regulatory areas 2C and 3A by the recreational quota entity authorized in part 679 of title 50, Code of Federal Regulations (or any successor regulations);

(3) halibut conservation and research; and

(4) promotion of the halibut resource by the recreational quota entity authorized in part 679 of title 50, Code of Federal Regulations (or any successor regulations).

(c) LIMITATION ON COLLECTION AND AVAILABILITY.—Fees shall be collected and available pursuant to this section only to the extent and in such amounts as provided in advance in appropriations Acts, subject to subsection (d).

(d) FEE COLLECTED DURING START-UP PERIOD.—Notwithstanding subsection (c), fees may be collected through the date of enactment of an Act making appropriations for the activities authorized under this Act through September 30, 2022, and shall be available for obligation and remain available until expended.

PURPOSE OF THE BILL

The purpose of H.R. 404 is to improve the management of driftnet fishing.

BACKGROUND AND NEED FOR LEGISLATION

Large-scale driftnet fishing is a method of fishing in which a gillnet or series of gillnets two-and-a-half kilometers or more in length is placed in the water and allowed to drift with the currents and winds to catch fish. The only such large-scale drift gillnet fishery remaining in the United States is on the West Coast and primarily targets swordfish. However, it also harvests other commercially valuable species, such as thresher, mako shark, and opah (also known as moonfish).

There are only 14 active permit holders for this fishery, down from approximately 150 in the early 1990s, yet this fishery catches more marine mammal bycatch than any other fishery on the West Coast. Similar gear has been banned in all other U.S. waters, the high seas, and by other nations such as Russia due to the high capture rate of bycatch. Large-scale driftnet fishing has an estimated bycatch rate of 64%: nearly two-thirds of the catch includes marine mammals, sea turtles, birds, and unmarketable fish. Beyond the excessive and unacceptable levels of bycatch, gillnets inflict harm upon targeted catch—lowering the overall value of the fish.

The use of gillnets is not a result of technological limitations; there are alternative and more ethical ways to fish. Alternative fishing gear, such as deep-set buoys, prove to substantially reduce harmful bycatch while also fetching higher income for fishers. This bi-modal approach is responsible for protecting vulnerable species while providing a path forward for the fishers who still use antiquated and harmful nets.

H.R. 404 would amend the Magnuson-Stevens Act¹ (MSA) to align the definition of large-scale driftnet with the definition contained in the Code of Federal Regulations. The bill would phase out large-scale driftnet fishing in the U.S. Exclusive Economic Zone within five years. In addition, H.R. 404 would establish a fishing gear transition program to assist permit holders with adopting alternative fishing gear.

The final section of H.R. 404 replicates an existing MSA fee authority to allow the North Pacific Fishery Management Council to recommend and the Secretary of Commerce to approve regulations to collect fees from halibut charter vessel operators. Funds from the fee would provide funding for administering a quota program, purchasing halibut quota shares in the International Pacific Halibut Commission regulatory area, and conducting conservation and research.

¹Magnuson-Stevens Fishery Conservation and Management Act, Pub. L. No. 94-265, 90 Stat. 331 (1976), <https://uscode.house.gov/statviewer.htm?volume=90&page=331> (codified as amended at various, see https://uscode.house.gov/table3/94_265.htm) (statutory compilation as amended through P.L. 116-340 at <https://www.govinfo.gov/content/pkg/COMPS-1678/pdf/COMPS-1678.pdf>).

COMMITTEE ACTION²

H.R. 404 was introduced on January 21, 2021, by Representative Ted Lieu (D–CA). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water, Oceans, and Wildlife. On November 17, 2021, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. Chair Raúl M. Grijalva (D–AZ) offered an amendment in the nature of a substitute. The Grijalva amendment in the nature of a substitute was agreed to by voice vote. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by voice vote.

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing on H.R. 1979 (116th) by the Subcommittee on Water, Oceans, and Wildlife held on May 8, 2019.

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.

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, as well as clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 7, 2022.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 404, the Driftnet Modernization and Bycatch Reduction Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robert Reese.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

²See also the legislative history in the 116th Congress for H.R. 1979 and S. 906.

H.R. 404, Driftnet Modernization and Bycatch Reduction Act			
As ordered reported by the House Committee on Natural Resources on November 17, 2021			
By Fiscal Year, Millions of Dollars	2023	2023-2027	2023-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	1	3	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Under Threshold

H.R. 404 would require the National Oceanic and Atmospheric Administration (NOAA) to conduct a transition program to facilitate the phaseout of large-scale driftnet fishing. The bill would authorize NOAA to provide grants to operators of driftnet fishing vessels with federal permits. Those grants would cover the cost of permits, the forfeiture of existing fishing gear, and the acquisition of alternative new fishing gear. The bill also would allow NOAA to impose fees on charter vessels that harvest Pacific halibut in certain parts of the northern Pacific Ocean.

According to NOAA, 42 vessels currently have driftnet fishing permits. CBO expects that most but not all of those vessels would apply for the grants authorized by H.R. 404. Using information from NOAA about the expected costs to reimburse fishers for the forfeited fishing gear and to purchase alternate gear, CBO estimates that implementing the bill would cost \$3 million over the 2023–2027 period. Such spending would be subject to availability of appropriated funds.

H.R. 404 also would authorize NOAA to levy additional fees on certain charter vessels that harvest Pacific halibut, which would then be spent on halibut conservation and research, administrative costs for the Recreational Quota Entity program, and purchases of halibut quota shares from the International Pacific Halibut Commission. The collection of those fees (and associated spending) could only occur to the extent that authority is provided in appropriations acts beginning in fiscal year 2023.

CBO estimates that those fees would total about \$4 million annually and would be credited as discretionary offsetting collections. Assuming appropriation language consistent with collecting and spending those fees, CBO estimates that the net effect on discretionary spending from implementing that provision would be insignificant in every year.

H.R. 404 would impose private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) by limiting fishing practices in the U.S. West Coast Exclusive Economic Zone and imposing new fees on charter-fishing operators harvesting Pacific halibut off the coast of Alaska. CBO estimates that the aggregate cost of complying with the mandates would fall below the annual thresh-

old established in UMRA (\$170 million, in 2021, adjusted annually for inflation).

The bill would limit the type of nets used in the drift gillnet fishery off the West Coast Exclusive Economic Zone. Current law only limits driftnet length. H.R. 404 would amend the definition of large-scale driftnet fishing to include nets with a mesh size of at least 14 inches. The new definition would effectively prohibit the use of large driftnets in the fishery. The cost of the mandate would be any revenue forgone by fishing operations whose catch decreases as a result of the new limitation. Using data from NOAA, CBO estimates that about 40 entities would be affected, and the loss of revenue would be small, about \$1 million annually.

The bill also would impose a new fee on operators of guided recreational fishing of Pacific halibut in the waters off Alaska. Using information from NOAA, CBO expects the aggregate cost of the fee would be small, about \$4 million annually.

H.R. 404 does not contain intergovernmental mandates as defined by UMRA.

The CBO staff contacts for this estimate are Robert Reese (for federal costs) and Lilia Ledezma (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director for Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to improve the management of driftnet fishing.

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.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to CBO, the bill, as reported, would impose private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) with compliance costs that would fall below the annual threshold established in UMRA. CBO's full analysis is reproduced above.

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. The Fishing Gear Transition Program established by this bill is related and complementary to, but not duplicative of, the following programs identified in the most recent Catalog of Federal Domestic Assistance published pursuant to 31 U.S.C. § 6104: Fisheries Finance Program (CFDA No. 11.415) and Regional Fishery Management Councils (CFDA No. 11.441).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

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 (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**MAGNUSON-STEVENS FISHERY CONSERVATION AND
MANAGEMENT ACT**

* * * * *

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 “bycatch” means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program.

(3) The term “charter fishing” means fishing from a vessel carrying a passenger for hire (as defined in section 2101(30) of title 46, United States Code) who is engaged in recreational fishing.

(4) The term “commercial fishing” means fishing in which the fish harvested, either in whole or in part, are intended to enter commerce or enter commerce through sale, barter or trade.

(5) 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.

(6) 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.

(7) 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—*Chaceon 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—*Arctica islandica*.

SPONGES

Glove Sponge—*Spongia cheiris*
 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.

(8) The term "Council" means any Regional Fishery Management Council established under section 302.

(9) The term "economic discards" means fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons.

(10) The term "essential fish habitat" means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.

(11) The term "exclusive economic zone" means the zone established by Proclamation Numbered 5030, dated March 10, 1983. For purposes of applying this Act, the inner boundary of that zone is a line coterminous with the seaward boundary of each of the coastal States.

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

(13) 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.

(14) The term "regional fishery association" means an association formed for the mutual benefit of members—

- (A) to meet social and economic needs in a region or sub-region; and
- (B) comprised of persons engaging in the harvest or processing of fishery resources in that specific region or subregion or who otherwise own or operate businesses substantially dependent upon a fishery.

(15) The term "fishery resource" means any fishery, any stock of fish, any species of fish, and any habitat of fish.

(16) 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.

(17) The term "fishing community" means a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel owners, opera-

tors, and crew and United States fish processors that are based in such community.

(18) 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.

(19) The term “foreign fishing” means fishing by a vessel other than a vessel of the United States.

(20) 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.

(21) The term “highly migratory species” means tuna species, marlin (*Tetrapturus* spp. and *Makaira* spp.), oceanic sharks, sailfishes (*Istiophorus* spp.), and swordfish (*Xiphias gladius*).

(22) The term “import”—

(A) means to land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(B) does not include any activity described in subparagraph (A) with respect to fish caught in the exclusive economic zone or by a vessel of the United States.

(23) The term “individual fishing quota” means a Federal permit under a limited access system to harvest a quantity of fish, expressed by a unit or units representing a percentage of the total allowable catch of a fishery that may be received or held for exclusive use by a person. Such term does not include community development quotas as described in section 305(i).

(24) 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.

(25) The term “large-scale driftnet fishing” means a method of fishing in which a gillnet composed of a panel or panels of webbing, or a series of such gillnets, with a total length of two and one-half kilometers or more, *or with a mesh size of 14 inches or greater*, is placed in the water and allowed to drift with the currents and winds for the purpose of entangling fish in the webbing.

(26) The term “limited access privilege”—

(A) means a Federal permit, issued as part of a limited access system under section 303A to harvest a quantity of fish expressed by a unit or units representing a portion of the total allowable catch of the fishery that may be received or held for exclusive use by a person; and

(B) includes an individual fishing quota; but

(C) does not include community development quotas as described in section 305(i).

(27) The term “limited access system” means a system that limits participation in a fishery to those satisfying certain eligibility criteria or requirements contained in a fishery management plan or associated regulation.

(28) The term “Marine Fisheries Commission” means the Atlantic States Marine Fisheries Commission, the Gulf States Marine Fisheries Commission, or the Pacific Marine Fisheries Commission.

(29) The term “migratory range” means the maximum area at a given time of the year within which fish of an anadromous species or stock thereof can be expected to be found, as determined on the basis of scale pattern analysis, tagging studies, or other reliable scientific information, except that the term does not include any part of such area which is in the waters of a foreign nation.

(30) The term “national standards” means the national standards for fishery conservation and management set forth in section 301.

(31) The term “observer” means any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.

(32) The term “observer information” means any information collected, observed, retrieved, or created by an observer or electronic monitoring system pursuant to authorization by the Secretary, or collected as part of a cooperative research initiative, including fish harvest or processing observations, fish sampling or weighing data, vessel logbook data, vessel or processor-specific information (including any safety, location, or operating condition observations), and video, audio, photographic, or written documents.

(33) The term “optimum”, with respect to the yield from a fishery, means the amount of fish which—

(A) will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems;

(B) is prescribed on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant social, economic, or ecological factor; and

(C) in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the maximum sustainable yield in such fishery.

(34) The terms “overfishing” and “overfished” mean a rate or level of fishing mortality that jeopardizes the capacity of a fishery to produce the maximum sustainable yield on a continuing basis.

(35) The term “Pacific Insular Area” means American Samoa, Guam, the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Island, Wake Island, or Palmyra Atoll, as applicable, and includes all islands and reefs appurtenant to such island, reef, or atoll.

(36) 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 orga-

nized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

(37) The term “recreational fishing” means fishing for sport or pleasure.

(38) The term “regulatory discards” means fish harvested in a fishery which fishermen are required by regulation to discard whenever caught, or are required by regulation to retain but not sell.

(39) The term “Secretary” means the Secretary of Commerce or his designee.

(40) The term “special areas” means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(41) The term “special areas” means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990. In particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.

(42) 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.

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

(44) The term “treaty” means any international fishery agreement which is a treaty within the meaning of section 2 of article II of the Constitution.

(45) The term “tuna species” means the following:

Albacore Tuna—*Thunnus alalunga*;
Bigeye Tuna—*Thunnus obesus*;
Bluefin Tuna—*Thunnus thynnus*;
Skipjack Tuna—*Katsuwonus pelamis*; and
Yellowfin Tuna—*Thunnus albacares*.

(46) The term “United States”, when used in a geographical context, means all the States thereof.

(47) The term “United States fish processors” means facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption.

(48) The term “United States harvested fish” means fish caught, taken, or harvested by vessels of the United States

within any fishery for which a fishery management plan prepared under title III or a preliminary fishery management plan prepared under section 201(h) has been implemented.

(49) The term “vessel subject to the jurisdiction of the United States” has the same meaning such term has in section 3(c) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(c)).

(50) The term “vessel of the United States” means—

(A) any vessel documented under chapter 121 of title 46, United States Code;

(B) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and measuring less than 5 net tons;

(C) any vessel numbered in accordance with chapter 123 of title 46, United States Code, and used exclusively for pleasure; or

(D) any vessel not equipped with propulsion machinery of any kind and used exclusively for pleasure.

(33) The term “waters of a foreign nation” means any part of the territorial sea or exclusive economic zone (or the equivalent) of a foreign nation, to the extent such territorial sea or exclusive economic zone is recognized by the United States.

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TITLE II—FOREIGN FISHING AND INTERNATIONAL FISHERY AGREEMENTS

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SEC. 206. LARGE-SCALE DRIFTNET FISHING.

(a) **SHORT TITLE.**—This section incorporates and expands upon provisions of the Driftnet Impact Monitoring, Assessment, and Control Act of 1987 and may be cited as the “Driftnet Act Amendments of 1990”.

(b) **FINDINGS.**—The Congress finds that—

(1) the continued widespread use of large-scale driftnets beyond the exclusive economic zone of any nation is a destructive fishing practice that poses a threat to living marine resources of the world’s oceans, including but not limited to the North and South Pacific Ocean and the Bering Sea;

(2) the use of large-scale driftnets is expanding into new regions of the world’s oceans, including the Atlantic Ocean and Caribbean Sea;

(3) there is a pressing need for detailed and reliable information on the number of seabirds, sea turtles, nontarget fish, and marine mammals that become entangled and die in actively fished large-scale driftnets and in large-scale driftnets that are lost, abandoned, or discarded;

(4) increased efforts, including reliable observer data and enforcement mechanisms, are needed to monitor, assess, control, and reduce the adverse impact of large-scale driftnet fishing on living marine resources;

(5) the nations of the world have agreed in the United Nations, through General Assembly Resolution Numbered 44-225, approved December 22, 1989, by the General Assembly,

that a moratorium should be imposed by June 30, 1992, on the use of large-scale driftnets beyond the exclusive economic zone of any nation;

(6) the nations of the South Pacific have agreed to a moratorium on the use of large-scale driftnets in the South Pacific through the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific, which was agreed to in Wellington, New Zealand, on November 29, 1989; **[and]**

(7) increasing population pressures and new knowledge of the importance of living marine resources to the health of the global ecosystem demand that greater responsibility be exercised by persons fishing or developing new fisheries beyond the exclusive economic zone of any nation**[.]; and**

(8) within the exclusive economic zone, large-scale driftnet fishing that deploys nets with large mesh sizes causes significant entanglement and mortality of living marine resources, including myriad protected species, despite limitations on the lengths of such nets.

(c) **POLICY.**—It is declared to be the policy of the Congress in this section that the United States should—

(1) implement the moratorium called for by the United Nations General Assembly in Resolution Numbered 44–225;

(2) support the Tarawa Declaration and the Wellington Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific; **[and]**

(3) secure a permanent ban on the use of destructive fishing practices, and in particular large-scale driftnets, by persons or vessels fishing beyond the exclusive economic zone of any nation**[.]; and**

(4) prioritize the phase out of large-scale driftnet fishing in the exclusive economic zone and promote the development and adoption of alternative fishing methods and gear types that minimize the incidental catch of living marine resources.

(d) **INTERNATIONAL AGREEMENTS.**—The Secretary, through the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall seek to secure international agreements to implement immediately the findings, policy, and provisions of this section, and in particular an international ban on large-scale driftnet fishing. The Secretary, through the Secretary of State, shall include, in any agreement which addresses the taking of living marine resources of the United States, provisions to ensure that—

(1) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, including vessels that may operate independently to develop new fishing areas, which operate beyond the exclusive economic zone of any nation, is included in such agreement;

(2) each large-scale driftnet fishing vessel of a foreign nation that is party to the agreement, which operates beyond the exclusive economic zone of any nation, is equipped with satellite transmitters which provide real-time position information accessible to the United States;

(3) statistically reliable monitoring by the United States is carried out, through the use of on-board observers or through dedicated platforms provided by foreign nations that are par-

ties to the agreement, of all target and nontarget fish species, marine mammals, sea turtles, and sea birds entangled or killed by large-scale driftnets used by fishing vessels of foreign nations that are parties to the agreement;

(4) officials of the United States have the right to board and inspect for violations of the agreement any large-scale driftnet fishing vessels operating under the flag of a foreign nation that is party to the agreement at any time while such vessel is operating in designated areas beyond the exclusive economic zone of any nation;

(5) all catch landed or transshipped at sea by large-scale driftnet fishing vessels of a foreign nation that is a party to the agreement, and which are operated beyond the exclusive economic zone of any nation, is reliably monitored and documented;

(6) time and area restrictions are imposed on the use of large-scale driftnets in order to prevent interception of anadromous species;

(7) all large-scale driftnets used are constructed, insofar as feasible, with biodegradable materials which break into segments that do not represent a threat to living marine resources;

(8) all large-scale driftnets are marked at appropriate intervals in a manner that conclusively identifies the vessel and flag nation responsible for each such driftnet;

(9) the taking of nontarget fish species, marine mammals, sea turtles, seabirds, and endangered species or other species protected by international agreements to which the United States is a party is minimized and does not pose a threat to existing fisheries or the long-term health of living marine resources; and

(10) definitive steps are agreed upon to ensure that parties to the agreement comply with the spirit of other international agreements and resolutions concerning the use of large-scale driftnets beyond the exclusive economic zone of any nation.

(e) REPORT.—Not later than January 1, 1991, and every year thereafter until the purposes of this section are met, the Secretary, after consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Merchant Marine and Fisheries of the House of Representatives a report—

(1) describing the steps taken to carry out the provisions of this section, particularly subsection (c);

(2) evaluating the progress of those efforts, the impacts on living marine resources, including available observer data, and specifying plans for further action;

(3) containing a list and description of any new fisheries developed by nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation; and

(4) containing a list of the nations that conduct, or authorize their nationals to conduct, large-scale driftnet fishing beyond the exclusive economic zone of any nation in a manner that diminishes the effectiveness of or is inconsistent with any inter-

national agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes.

(f) CERTIFICATION.—If at any time the Secretary, in consultation with the Secretary of State and the Secretary of the department in which the Coast Guard is operating, identifies any nation that warrants inclusion in the list described under subsection (e)(4), the Secretary shall certify that fact to the President. Such certification shall be deemed to be a certification for the purposes of section 8(a) of the Fishermen’s Protective Act of 1967 (22 U.S.C. 1978(a)).

(g) EFFECT ON SOVEREIGN RIGHTS.—This section shall not serve or be construed to expand or diminish the sovereign rights of the United States, as stated by Presidential Proclamation Numbered 5030, dated March 10, 1983, and reflected in this Act or other existing law.

(h) DEFINITION.—As used in this section, the term “living marine resources” includes fish, marine mammals, sea turtles, and seabirds and other waterfowl.

(i) FISHING GEAR TRANSITION PROGRAM.—

(1) IN GENERAL.—*During the 5-year period beginning on the date of enactment of the Driftnet Modernization and Bycatch Reduction Act, the Secretary shall conduct a transition program to facilitate the phase-out of large-scale driftnet fishing and adoption of alternative fishing practices that minimize the incidental catch of living marine resources, and shall award grants to eligible permit holders who participate in the program.*

(2) PERMISSIBLE USES.—*Any permit holder receiving a grant under paragraph (1) may use such funds only for the purpose of covering—*

(A) *any fee originally associated with a permit authorizing participation in a large-scale driftnet fishery, if such permit is surrendered for permanent revocation, and such permit holder relinquishes any claim associated with the permit;*

(B) *a forfeiture of fishing gear associated with a permit described in subparagraph (A); or*

(C) *the purchase of alternative gear with minimal incidental catch of living marine resources, if the fishery participant is authorized to continue fishing using such alternative gears.*

(3) CERTIFICATION.—*The Secretary shall certify that, with respect to each participant in the program under this subsection, any permit authorizing participation in a large-scale driftnet fishery has been permanently revoked and that no new permits will be issued to authorize such fishing.*

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TITLE III—NATIONAL FISHERY MANAGEMENT PROGRAM

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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);

(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;

(I) to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, 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 fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act;

(J) to ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live lobster of the species *Homarus americanus*, that—

(i) is smaller than the minimum possession size in effect at the time under the American Lobster Fishery Management Plan, as implemented by regulations published in part 649 of title 50, Code of Federal Regulations, or any successor to that plan implemented under this title, or in the absence of any such plan, is smaller than the minimum possession size in effect at the time under a coastal fishery management plan for American lobster adopted by the Atlantic States Marine Fisheries Commission under the Atlantic Coastal Fisheries Cooperative Management Act (16 U.S.C. 5101 et seq.);

(ii) is bearing eggs attached to its abdominal appendages; or

(iii) bears evidence of the forcible removal of extruded eggs from its abdominal appendages;

(K) to knowingly steal, or without authorization, to remove, damage, or tamper with—

(i) fishing gear owned by another person, which is located in the exclusive economic zone, or

(ii) fish contained in such fishing gear;

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

(M) to engage in large-scale driftnet fishing that is subject to the jurisdiction of the United States, including use of a fishing vessel of the United States to engage in such fishing beyond the exclusive economic zone of any nation, *unless such large-scale driftnet fishing—*

(i) deploys, within the exclusive economic zone, a net with a total length of less than two and one-half kilometers and a mesh size of 14 inches or greater; and

(ii) is conducted within 5 years of the date of enactment of the Driftnet Modernization and Bycatch Reduction Act;

(N) to strip pollock of its roe and discard the flesh of the pollock;

(O) to knowingly and willfully fail to disclose, or to falsely disclose, any financial interest as required under section 302(j), or to knowingly vote on a Council decision in violation of section 302(j)(7)(A);

(P)(i) to remove any of the fins of a shark (including the tail) at sea;

(ii) to have custody, control, or possession of any such fin aboard a fishing vessel unless it is naturally attached to the corresponding carcass;

(iii) to transfer any such fin from one vessel to another vessel at sea, or to receive any such fin in such transfer, without the fin naturally attached to the corresponding carcass; or

(iv) to land any such fin that is not naturally attached to the corresponding carcass, or to land any shark carcass without such fins naturally attached;

(Q) to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation or any treaty or in contravention of any binding conservation measure adopted by an international agreement or organization to which the United States is a party; or

(R) to use any fishing vessel to engage in fishing in Federal or State waters, or on the high seas or in the waters of another country, after the Secretary has made a payment to the owner of that fishing vessel under section 312(b)(2).

For purposes of subparagraph (P), there shall be a rebuttable presumption that if any shark fin (including the tail) is found

aboard a vessel, other than a fishing vessel, without being naturally attached to the corresponding carcass, such fin was transferred in violation of subparagraph (P)(iii) or that if, after landing, the total weight of shark fins (including the tail) landed from any vessel exceeds five percent of the total weight of shark carcasses landed, such fins were taken, held, or landed in violation of subparagraph (P). In such subparagraph, the term “naturally attached”, with respect to a shark fin, means attached to the corresponding shark carcass through some portion of uncut skin.

(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—

(A) in fishing within the boundaries of any State, except—

(i) recreational fishing permitted under section 201(i);

(ii) fish processing permitted under section 306(c); or

(iii) transshipment at sea of fish or fish products within the boundaries of any State in accordance with a permit approved under section 204(d);

(B) in fishing, except recreational fishing permitted under section 201(i), within the exclusive economic zone, or for any anadromous species or Continental Shelf fishery resources beyond such zone or areas, unless such fishing is authorized by, and conducted in accordance with, a valid and applicable permit issued pursuant to section 204(b), (c), or (d); or

(C) except as permitted under section 306(c), in fish processing (as defined in paragraph (4)(A) of such section) within the internal waters of a State (as defined in paragraph (4)(B) of such section);

(3) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to transfer at sea directly or indirectly, or attempt to so transfer at sea, any United States harvested fish to any foreign fishing vessel, while such foreign vessel is within the exclusive economic zone or within the boundaries of any State except to the extent that the foreign fishing vessel has been permitted under section 204(d) or section 306(c) to receive such fish;

(4) for any fishing vessel other than a vessel of the United States to operate, and for the owner or operator of a fishing vessel other than a vessel of the United States to operate such vessel, in the exclusive economic zone or within the boundaries of any State or special areas, if—

(A) all fishing gear on the vessel is not stored below deck or in an area where it is not normally used, and not readily available, for fishing; or

(B) all fishing gear on the vessel which is not so stored is not secured and covered so as to render it unusable for fishing;

unless such vessel is authorized to engage in fishing in the area in which the vessel is operating; and

(5) for any vessel of the United States, and for the owner or operator of any vessel of the United States, to engage in fish-

ing in the waters of a foreign nation in a manner that violates an international fishery agreement between that nation and the United States that has been subject to Congressional oversight in the manner described in section 203, or any regulations issued to implement such an agreement; except that the binding provisions of such agreement and implementing regulations shall have been published in the Federal Register prior to such violation.

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SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

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