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REPORT
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FISHERMEN'S PROTECTIVE ACT AMENDMENTS

FEBRUARY 23, 1995.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. YOUNG of Alaska, from the Committee on Resources, submitted the following

REPORT

[To accompany H.R. 716]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 716) to amend the Fishermen's Protection Act, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 716 is to amend the Fishermen's Protective Act (FPA) to expand the use of the Fishermen's Protective Fund, to extend the effective date of section 7 of the FPA, and to amend provisions relating to the collection of fees from participating fishermen.

BACKGROUND AND NEED FOR LEGISLATION

The Fishermen's Protective Act of 1967 (22 U.S.C. 1971 et seq.) established a program under which the Secretary of State may compensate fishermen for fines paid to secure the release of fishing vessels and crew which have been illegally seized by a foreign government. These repayments are to be made from the Fishermen's Protective Fund established under section 9 of the FPA. The FPA also established a voluntary insurance program financed through contributions from fishermen to compensate fishermen who suffer lost income as a result of the seizure. Payments under this program are made from the Fishermen's Guaranty Fund under section 7 of the FPA.

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On June 15, 1994, in the aftermath of a breakdown in negotiations between the United States and Canada on Pacific salmon fishing rights, the Government of Canada imposed a $1500 (Canadian) transit fee on U.S. commercial fishing vessels passing through certain waters adjacent to Canada. The Department of State judged the fee inconsistent with international law. The Canadian Government has since lifted the fee; however, this did not occur until after 258 vessels had already been forced to pay it.

COMMITTEE ACTION

H.R. 716 was introduced by Chairman Don Young on January 26, 1995, along with Congressman Jim Saxton and Congressman Gerry Studds, and was referred to the Committee on Resources. The bill was subsequently referred to the Subcommittee on Fisheries, Wildlife and Oceans.

On January 25, 1995, the Subcommittee on Fisheries, Wildlife and Oceans held a hearing on H.R. 716, and other issues. Ambassador David A. Colson, Deputy Assistant Secretary of State for Oceans, and Mr. Rolland A. Schmitten, Assistant Administrator for Fisheries, National Marine Fisheries Service, testified for the Administration. Both witness discussed the need to amend the Fishermen's Protective Act to enable the United States Government to reimburse U.S. fishermen who paid the Canadian transit fee.

On February 1, 1995, the Subcommittee on Fisheries, Wildlife and Oceans met to consider H.R. 716. No amendments were offered and the bill was ordered reported to the Full Committee by voice vote.

On February 8, 1995, the full Committee on Resources met to consider H.R. 716. No amendments were offered and the bill was ordered reported to the House by voice vote, with the presence of a quorum.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Amendments to the Fishermen's Protective Act of 1967

This section expands the existing compensation program in section 3 of the FPA to cover the reimbursement of fees paid by a U.S. fishing vessel transiting waters of a foreign nation when the fees are determined to be inconsistent with international law. This section also authorizes the Secretary of State to seek reimbursement from the nation imposing the fee.

This section also clarifies the circumstances under which fees may be collected by the Secretary of State from fishermen participating in the Fishermen's Guaranty Fund, established under section 7 of the FPA. This voluntary program provides compensation to a fishing vessel owner for incidental costs, such as the loss of gear or fish or damage to the vessel, associated with an unfair seizure by a foreign nation. This language clarifies the Secretary's authority to assess reasonable fees on those participating in this program.

Finally, this section reactivates the Fishermen's Guaranty Fund, which expired in 1993. The amendment allows money to be deposited in this Fund until October 1, 1998, and removes an obligation that a portion of the funds be appropriated by Congress.

Sec. 2. Clearance and entry of commercial fishing vessels

This section directs the Secretaries of State and Treasury to take certain actions when a foreign nation imposes a fee on U.S. commercial fishing vessels transiting that nation's waters. Currently, Canadian fishing vessels routinely receive U.S. Customs clearance by radio to enter U.S. waters at night. This section would deny access to the West Coast and Alaskan waters of the U.S. to any foreign fishing vessel registered in a nation that charges a transit fee to U.S. vessels. Exceptions are allowed in the case of an emergency, when a vessel is operating under a treaty providing freedom of access, or if a vessel master pays a fee to the U.S. equal to that charged to a U.S. vessel. When paying the fee, the vessel master must do so in person at a designated port of entry.

Violation of this section subjects the vessel master and/or owner to civil penalties under the Magnuson Fishery Conservation and Management Act.

Sec. 3. Technical correction

This section corrects an enrolling error in Public Law 103–238.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(l)(3) of rule XI of the Rules of the House of Representatives and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the body of this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 716 will have no significant inflationary impact on prices and costs in the operation of the national economy.

COST OF THE LEGISLATION

Clause 7 of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 716. However, clause 7(d) of that Rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirements of clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Subcommittee on Fisheries, Wildlife and Oceans held hearings on H.R. 716 and other pending fisheries issues on January 25, 1995, and the oversight findings and recommendations of the Committee are reflected in this report.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from

the Committee on Government Reform and Oversight on the subject of H.R. 716.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 716 from the Director of the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 15, 1995.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget office has prepared the enclosed cost estimate for H.R. 716, a bill to amend the Fishermen's Protective Act.

Enactment of H.R. 716 would affect direct spending and receipts. Therefore, pay-as-you-go procedures would apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: H.R. 716.

2. Bill title: A bill to amend the Fishermen's Protective Act.

3. Bill status: As ordered reported by the House Committee on Resources on February 8, 1995.

4. Bill purpose: H.R. 716 would extend the authority of the State Department to reimburse fishermen from the Fishermen's Protective Fund to include reimbursement for certain fees. The bill would extend the authorization of the Fishermen's Guaranty Fund through fiscal year 1998, and would repeal the requirement that a certain percentage of deposits to this fund come from appropriated funds. It also would permit the State Department to collect fees regardless of whether the fee collections were needed to carry out the purposes of the fund. In addition, the bill would require the State Department to publish annually a list of countries imposing certain fees. Commercial fishing vessels registered in listed countries could not receive clearance to enter certain waters of the United States except under certain circumstances. Those vessels entering without clearance would be subject to civil penalties.

5. Estimated cost to the Federal Government: CBO estimates that enacting H.R. 716 would result in direct spending. The following table summarizes CBO's estimates of the budgetary impact of this bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Direct spending:					
Estimated budget authority	0	0	0	....	....

[By fiscal year, in millions of dollars]

	1996	1997	1998	1999	2000
Estimated outlays	0.3	0	0	....	....
Estimated revenues	0	0	0	0	0

The costs of this bill fall within budget function 370.

Direct Spending. H.R. 716 would extend the authorization of the Fishermen's Guaranty Fund through fiscal year 1998. Based on information from the State Department, CBO projects that unobligated balances in the fund would become available for spending as a result of enactment of this bill, and that payments from the fund would total approximately $400,000 annually from 1996 through 1998. (Payments in excess of the $2.9 million unobligated balance in the Fishermen's Guaranty Fund could be made only to the extent provided in advance in appropriations acts.)

Under current law, the State Department may collect fees for the Fishermen's Guaranty Fund only after receiving an appropriation to the fund, and then only in an amount equal to twice the appropriation. The bill would no longer require an appropriation before permitting the State Department to collect fees for the fund. Because collection of fees would no longer require appropriations action, fee collections would reduce direct spending. Based on information from the State Department, CBO estimates that the department would collect approximately $400,000 per year for fiscal years 1996 through 1998, offsetting the additional direct spending.

Enacting H.R. 716 also would make owners of various fishing vessels eligible for payments totaling $284,000 from the Fishermen's Protective Fund. The fund currently has sufficient unobligated balances to make such payments, so we estimate that the bill would result in additional outlays of $284,000 in 1996. This amount would be direct spending because the expenditures would take place without further appropriation action.

Spending Subject to Appropriations. The bill would require the State Department to publish a list of nations that charge certain fees to U.S. commercial fishing vessels. CBO estimates that compiling such a list would cost less than $5,000 annually.

Revenues. Commercial fishing vessel of nations appearing in the list compiled by the State Department would be prohibited, with certain exceptions, from entering certain waters of the United States without paying a fee to the Department of the Treasury. Any collections from these fees would be considered governmental receipts; however, because no countries are charging the fees in question to U.S. fishing vessels, CBO does not expect that any fees would be collected as a result of enactment of this provision.

The bill would make violators of this provision liable for civil penalties. Receipts from civil penalties would be governmental receipts. Again, because no nations are currently charging the fees in question to U.S. fishing vessels, CBO expects that there would be no violators, and therefore CBO does not expect that any additional collections would result from these civil penalties.

6. Comparison with spending under current law: H.R. 716 would lead to increased spending of $284,000 from the Fishermen's Prospective Fund. This additional spending would probably occur in

1996. CBO expects that there will be no spending from this fund in 1995.

7. Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Because H.R. 716 would affect direct spending and receipts, the bill would be subject to pay-as-you-go procedures. The bill would permit the State Department to collect about $400,000 per year in fees for the 1996–1998 period. The State Department also would be permitted to make payments from unobligated balances of the Fishermen's Guaranty Fund without appropriations action. This spending would total approximately $400,000 per year for the 1996–1998 period. In addition, the bill would increase spending by $284,000 in 1996 out of unobligated balances of the Fishermen's Protective Fund.

The bill also would permit the Department of the Treasury to collect fees under certain circumstances. These fee collections would count as governmental receipts, but CBO does not expect any fees to be collected. Finally, the bill would make violators of certain provisions liable for civil penalties. Collections from civil penalties would count as governmental receipts, but because CBO does not expect violations to occur, we do not expect that any civil penalties would be collected. The following table summarizes the estimated pay-as-you-go effect of the bill.

[By fiscal year, in millions of dollars]

	1996	1997	1998
Changes in receipts	0	0	0
Changes in outlays	0	0	0

8. Estimated cost to state and local governments: None.

9. Estimate comparison: None.

10. Previous CBO estimate: None.

11. Estimate prepared by: John Webb (226–2860) and Melissa Sampson (226–2720).

12. Estimate approved by: Paul N. Van de Water, Assistant Director for Budget Analysis.

DEPARTMENT REPORTS

The Committee has received a departmental report from the Department of State dated February 7, 1995, on H.R. 716.

U.S. DEPARTMENT OF STATE,
Washington, DC, February 7, 1995.

Hon. DON YOUNG,
Chairman, Committee on Resources,
House of Representatives.

DEAR MR. CHAIRMAN: This letter is to provide the Committee with our views on H.R. 716, a bill to amend the Fishermen's Protective Act. The Department of State supports H.R. 4852, which was passed by the full House during the 103rd Congress.

In the detailed comments which are enclosed, we refer both to H.R. 716 and to H.R. 4852.

In general, we are concerned that H.R. 716, which would authorize us to reimburse fishermen who paid a "transit fee" to Canada last summer, be drafted in a manner that is sufficiently flexible to allow us to make prompt payments to the fishermen. We have other concerns, which are addressed in our detailed comments as well. We hope that we can work with you to conclude the drafting of this bill quickly, and in a manner which will allow expeditious implementation.

As provided in current law, we will pursue all possible avenues for reimbursement from Canada.

I hope this information is useful to you. Please do not hesitate to call if we can be of further assistance.

Sincerely,

WENDY R. SHERMAN,
Assistant Secretary, Legislative Affairs.

Enclosure.

COMMENTS ON H.R. 716

BACKGROUND

In response to Canada's imposition of "transit fees" on U.S. fishing vessels transiting the "Inside Passage" last June, the Administration and concerned Members of Congress suggested that fishermen pay the fee, under protest, and that they file for reimbursement under the Fishermen's Protective Act of 1967 (22 U.S.C. 1971–1980—the Act). Several bills to amend the Act to give the Secretary of State the authority to make this reimbursement were considered in the 103d Congress. The Administration commented extensively on H.R. 3817 and on a Senate bill, S. 2243. Title V of H.R. 4852, which was approved by the full House on October 7, 1994, contained language identical to S. 2243.

COMMENTS

The Administration prefers the approach taken by H.R. 4852 in the last Congress. The remaining concerns with H.R. 716 are set out below:

1. Free-standing Sec. 11

The Department prefers the addition of a new section to the existing language of Fisherman's Protective Act to provide for reimbursement of transit fees. In order to ensure that the provisions regarding reimbursement for transit fees may "sunset," once the Canadian problem is resolved, the Administration supports the H.R. 4852 approach (i.e., a separate section that addresses the specific problem). H.R. 716 proposes to amend 22 U.S.C. 1973, a section of the FPA which was drafted to respond to other circumstances, to give the Department authority to reimburse fishermen for these fees.

2. Authority to use unexpended balances of the FPF and FGF

The Department requires the flexibility to use unexpended balances available in either the Fishermen's Protective Fund (FPF) or the Fishermen's Guaranty Fund (FGF). H.R. 4852 provided the needed flexibility. The Department believes that it is important to pay these claims quickly. In order to do so, about 260 claims must be processed, certified for payment, and paid. Thus, the Department must have maximum flexibility to manage the claims process. Under current law, the FGF (22 U.S.C. 1977) is used to reimburse fishermen for losses experienced under criteria in the FPA. The office responsible for FGF claims has been the Department of State action office for this problem from the start. It is prepared to deal with these claims on a priority basis, but can do so only if the legislation provides the needed flexibility.

H.R. 716 does not provide that flexibility. Under current law the FPF (established under 22 U.S.C. 1973) reimburses fishermen for fines and fees necessary to secure the release of their vessels, when the seizures meet the criteria stated in the FPA. This section of the FPA was drafted to address a different situation than the one at hand. We believe it is best not to broaden the scope of this section, but rather to add a different section to address the specific problem.

3. Sunset provision

Reviewers of last year's draft legislation were concerned that some might construe the establishment of a commitment to reimburse transit fees as an entitlement and therefore suggested that the provision expire, following a period of time sufficient for fishermen involved to file their claims and be reimbursed. The Department supports the language in SEC. 502.(g) of H.R. 4852, which terminates the authorization of the free-standing transit fee (Section 11) portion of the FPA. H.R. 716 is a permanent change to the FPA, with no end point, and it thus changes the scope of the Act significantly.

4. FGF fee collections

The collection of fees for participation in the FGF is not related to the transit fee problem; both H.R. 4852 and H.R. 716 address a persistent technical problem concerning the match between direct appropriations and fee collections satisfactorily by deleting the third sentence in 22 U.S.C. 1977 (c).

5. Paygo problems

H.R. 716 would increase direct spending; therefore it is subject to the pay-as-you-go requirement of the Omnibus Budget Reconciliation Act of 1990. It is estimated that H.R. 716 would increase direct spending by less than $500,000. The mechanism established under the Fishermen's Protective Act at 22 U.S.C. 1975, calls for the Secretary of State to make claims from the other government involved for any payments made under 22 U.S.C. 1973 or 22 U.S.C. 1977. The U.S. will pursue reimbursement for transit fees from Canada through all possible avenues.

6. "Unexpended balances"

Several reviewers of draft bills before the 103rd Congress expressed concern that reimbursement to fishermen who paid transit fees be limited to the portion of the unexpended balance of funds in the 22 U.S.C. 1977 (FGF) account derived from direct appropriations, rather than expend funds from the portion derived from fee collections. Fees, direct appropriations, and interest income are commingled in the FGF account; no accurate accounting by source of funds is possible. The language in H.R. 4852 is preferred over that in H.R. 716.

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):

FISHERMEN'S PROTECTIVE ACT OF 1967

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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, *or when a fee regarded by the United States as being inconsistent with international law must be paid for a vessel of the United States to transit the waters of a foreign nation on a voyage between points in the United States (including a point in the exclusive economic zone or an area whose jurisdiction is in dispute),* the owners of the vessel shall be reimbursed by the Secretary of State in the amount determined and certified by him 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, 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. Any reimbursement under this section shall be made from the Fishermen's Protective Fund established pursuant to section 9.

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SEC. 5. (a) The Secretary of State shall—

(1) immediately notify a foreign country of—

(A) any reimbursement made by him under section 3 as a result of the seizure of *or imposition of a fee regarded by the United States as inconsistent with international law on* a vessel of the United States by such country,

* * * * * * *

SEC. 7. (a) * * *

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(c) The Secretary shall from time to time establish by regulation fees which shall be paid by the owners of vessels entering into agreements under this section. *Fees may be collected regardless of whether needed to carry out the purposes of subsection (a).* Such fees shall be adequate (1) to recover the costs of administering this section, and (2) to cover a reasonable portion of any payments made by the Secretary under this section. [The amount fixed by the Secretary shall be predicated upon at least 33⅓ per centum of the contribution by the Government.] All fees collected by the Secretary shall be credited to a separate account established in the Treasury of the United States which shall remain available without fiscal year limitation to carry out the provisions of this section. Those fees not currently needed for payments under this section shall be kept on deposit or invested in obligations of, or guaranteed by, the United States and all revenues accruing from such deposits or investments shall be credited to such separate account. If a transfer of funds is made to the separate account under section 5(b)(2) with respect to an unpaid claim and such claim is later paid, the amount so paid shall be covered into the Treasury as miscellaneous receipts. All payments under this section shall be made first out of such fees so long as they are available, and thereafter out of funds which are hereby authorized to be appropriated to such account to carry out the provisions of this section.

* * * * * * *

(e) The provisions of this section shall be effective until ⟦October 1, 1993⟧ *October 1, 1998*, except that payments may be made under this section only to such extent and in such amounts as are provided in advance in appropriation Acts.

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SECTION 15 OF THE MARINE MAMMAL PROTECTION ACT AMENDMENTS OF 1994

SEC. 15. TRANSITION RULE; IMPLEMENTING REGULATIONS.

(a) TRANSITION RULE.—Section 114(a)(1) (16 U.S.C. 1383a(a)(1)) is amended by striking “ending ⟦April 1, 1994,⟧ *May 1, 1994.*” and inserting in lieu thereof “until superseded by regulations prescribed under section 118, or until September 1, 1995, whichever is earlier,”.

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SECTION 114 OF THE MARINE MAMMAL PROTECTION ACT OF 1972

INTERIM EXEMPTION FOR COMMERCIAL FISHERIES

SEC. 114. (a)(1) During the period beginning on the date of enactment of this section and ending ⟦May 1, 1994.⟧ *until superseded by regulations prescribed under section 118, or until September 1, 1995, whichever is earlier,* except as provided in paragraph (2), the provisions of this section, rather than sections 101, 103, and 104, shall govern the incidental taking of marine mammals in the course of commercial fishing operations by persons using vessels of the United States and vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1824(b)). In any event it shall be the immediate goal that the incidental kill or serious injury of marine mammals permitted in the course of commercial fishing operations be reduced to insignificant levels approaching a zero mortality and serious injury rate.

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